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# The Washington Law Reporter

RICHARD A. FORD, EDITOR

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### Boycott by Labor Unions of Product of Non-Union Factory Enjoined.

In connection with the recent decision of Mr. Justice Gould, in the case of Buck Stove and Range Co. v. American Federation of Labor, reported in our columns, may be noted the decision of the United States Circuit Court of Appeals, in the case of Shine et al. v. Fox Bros. Mfg. Co., 156 Fed., 357. In that case it appeared the complainant company operated a factory for the manufacture of sash, doors, and other articles of "trim" for buildings in St. Louis, employing from 50 to 75 men. It conducted its factory on the open shop principle, employing union and non-union men without discrimination; but all of its workmen were in fact non-union. Defendants were labor unions, and their representatives comprising carpenters and members of the building trades. They appointed a committee for the purpose of unionizing complainant's and other non-union shops, which committee did not attempt to induce complainant's employees to join the union, but tried to induce complainant to employ only union men and to discharge all employees who did not join the union. When complainant refused, they issued circulars, giving a list of all union shops in the city engaged in the same business, and stating that union carpenters would not be permitted to work upon building materials not the product of a union shop, which they sent to building contractors and owners, and by threatening, and in some instances calling, strikes of their union workmen, they compelled a number of contractors who had been customers of complainant to

sign agreements not to buy from it in the future, and in other ways undertook to make it impossible for complainant to do business unless it acceded to their demands. It was held that this concert of action on the part of defendants and their acts constituted an unlawful interference with complainant's business, which entitled it to an injunction.

### Life Insurance—Policy Payable to Creditor of Assured.

In Reed v. Provident Savings Life Assurance Society, decided by the Court of Appeals of New York, and reported in the New York Law Journal, the question was as to the validity of a policy of insurance taken out by a creditor on the life of his debtor, pursuant to an agreement between them. The court holds that a life insurance policy is not a contract of indemnity; it is a contract to pay a sum of money upon the death of the assured, in consideration of payments made to the company during his life. If the insurance is made upon the application of one who has no insurable interest in the life insured, it is a wager policy, which the law condemns. But a person may insure his own life and provide in the contract of insurance that the money shall be paid to any one he may appoint or assign the policy to. What will distinguish the one contract from the other is the fact as to the party actually contracting with the insurer. A policy procured by the plaintiff upon the life of his uncle, as his nephew and creditor, payable to himself as such and to the children of the assured, pursuant to a contract and agreement made between them whereby he was to pay the premiums and be repaid with interest, and a substantial amount in addition thereto, out of the proceeds of the policy on the death of the assured, is a valid and enforceable policy; and when, upon the failure of the company, the plaintiff procured in place thereof a policy in another company, on the same life and under the same contract, but payable to himself alone, he then being a creditor of the assured, the substituted policy may be enforced and its proceeds distributed in accordance with the agreement. It is of no consequence, so far as its validity is concerned, that the plaintiff's interest as a creditor of the assured when he procured the policy was less than its amount.

Damages.—The rule, as to recovery of damages for mental suffering, of the State where a telegram is presented for transmission, and not that of the State where it is to be delivered, is held, in Johnson v. Western U. Teleg. Co. (N. C.), 10 L. R. A. (N. S.), 256, to govern in an action for damages for failure to deliver a telegram, although the suit is brought in the latter State.

## Court of Appeals of the District of Columbia.

JOSEPH PAOLUCCI, APPELLANT,

v.

THE UNITED STATES.

### CRIMINAL LAW; MISCONDUCT OF JUROR; NEW TRIAL.

In a prosecution for murder, after verdict of guilty, defendant filed a motion for new trial supported by two affidavits alleging that one of the jurors, some months before the trial, had expressed strong prejudice against foreigners and particularly Italians, to which nationality defendant belonged. It appeared that the juror was examined on his voir dire and disclaimed having any prejudice against Italians. The trial court entertained the motion and heard argument, though the juror himself was not produced to deny the utterances charged. The motion was denied, and this action of the trial court was assigned as error. *Held*, that the trial court was not bound to call for evidence denying the facts stated in the affidavits or else grant a new trial; that there was no abuse of its discretion in refusing to grant a new trial, and the judgment affirmed: distinguishing *Keely v. Moore*, 31 Wash. Law Rep., 339.

No. 1832. Decided December 11, 1907.

APPEAL by the defendant from a judgment of the Supreme Court of the District of Columbia, Criminal, No. 25,306, entered upon a verdict finding him guilty of murder in the first degree. Affirmed.

Mr. THOS. C. TAYLOR, Mr. W. J. LAMBERT, and Mr. R. H. YEATMAN for the appellant.

Mr. D. W. BAKER and Mr. STUART MCNAMARA for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

By indictment presented November 26, 1906, the appellant, Joseph Paolucci, was charged with the murder of Elizabeth V. Dodge. His trial resulted in a verdict of guilty of murder in the first degree on March 8, 1907.

The evidence tended to show that the defendant had been a suitor of Miss Dodge, and that his suit had been rejected by her. It further showed that about 2 o'clock in the afternoon of September 13, 1906, Miss Dodge was returning from a nearby house, from which she and her mother were preparing to remove, and the door of which she had gone to lock, to her mother's confectionery shop, when the defendant met her and fired three shots into her body from a .32-caliber revolver. She fell dead in the street, and defendant then fired one shot into his own body. No exception was taken to any action of the court throughout the entire proceedings on the trial.

An amended motion for new trial was filed under leave of the court some days after the return of the verdict. This motion was founded on two affidavits filed April 19, 1907. One of the affiants, Francis M. Shelton, stated that he was well acquainted with Alfred J. Birmingham, who was a juror in the case, and had heard him express strong feelings of enmity against the Italian people during the summer of 1906, and heard him say that "every d—d Italian ought to be driven out of the country or hanged."

The other affiant, Kate A. Birmingham, stated that her husband, Alfred J. Birmingham, has for years entertained strong feelings of prejudice against foreigners generally, and especially against Italians; and that, as late as September, 1906, she had heard him say, in substance and effect, that

every Italian ought to be driven out of the country or hanged. Her affidavit concludes as follows: "Considerations of duty, good conscience, and simple justice prompt me to state these facts in behalf of the said Paolucci, whom public sentiment largely adjudges to have been love-crazed at the time of the alleged homicide"

The affidavit of appellant, in support of his motion to set aside the verdict, on account of the prejudice of the said juror, stated that he was a subject of the King of Italy; that he had not heard before the empanel of the jury, and had no reason to suspect that said juror entertained any bias or prejudice against the Italian people, until after the return of the verdict and the expiration of the term limited for filing a motion for new trial; nor had his attorneys any knowledge of the fact. No counter affidavits were filed, but it appears that it was admitted on the hearing of the motion that the affiant, Kate Birmingham, was the estranged wife of the juror. The record shows, also, that when the juror was called during the formation of the jury, he had been examined under oath touching his qualifications. The following questions were propounded to him at that time: "Have you any business relations with Italians?" "You have no prejudice against that nationality?" "You have no prejudice against a man because he is a Catholic, have you?" To each of these questions he answered, "No." This further question was then asked: "Take the case of a young man disappointed in love who gives way to his emotions; have you any prejudice against a man of that kind?" He answered: "No, sir; I would certainly sympathize with him." It does not appear whether these questions were asked on behalf of the Government or the defendant. The juror was then accepted and the trial proceeded.

The court entertained the motion and heard argument thereon. Some days thereafter, on May 10, 1907, the motion was denied, the verdict approved, and final judgment entered sentencing the defendant to be hanged. From this action the appeal has been prosecuted.

In the courts of the United States the general rule is well established that the action of a trial court in refusing a motion for new trial is not the subject of review in an appellate court. *Blitz v. U. S.*, 153 U. S., 308, 312; *Smith v. Mississippi*, 162 U. S., 592, 601; *Addington v. U. S.*, 165 U. S., 184, 185; *West v. U. S.*, 20 App. D. C., 347, 351; 30 Wash. Law Rep., 582.

In *Keely v. Moore* (22 App. D. C., 9, 29; 31 Wash. Law Rep., 339), it was said: "There are or may be exceptions to the rule, and among these exceptions are some cases of misconduct on the part of the jury and others connected with the jury which the trial court has refused to consider, or has erroneously considered upon an uncontested state of facts." For this statement of exceptions to the general rule, there is cited, among others, the case of *Clyde Mattox v. U. S.*, 146 U. S., 140, 147. In *Keely v. Moore* an attempt had been made to show gross misconduct by one of the jurors during the trial, namely intoxication; and some other charges were made. The trial justice, not only entertained the charges, but heard evidence in support and denial of the same; after which he denied the motion. In such case, it was said, an appellate court should not interfere with his conclusion. In *Clyde Mattox v. U. S.*, supra, affidavits were offered in support of a

motion for a new trial, based on the misconduct of the jury and the officers in attendance upon them. The charge was made that these officers made prejudicial statements to the jury, among them, that this was the third man the defendant had killed. It was also shown that a local newspaper, after submission of the case to the jury, published an account of the trial denouncing the defendant as guilty, and stating the expectation of the public that he would be so found by the jury, which had consumed some time in the consideration of the case. This article was read in the presence and hearing of the jury. The affidavits and a copy of the article were offered in support of the motion for new trial, but the court refused to receive or consider them. This was held to be error. After commenting on the facts and reviewing cases relating to the question of extraneous influences brought to bear upon jurors in consideration of a case, Mr. Chief Justice Fuller, who delivered the opinion of the court, said: "We should therefore be compelled to reverse the judgment because the affidavits were not received and considered by the court; but another ground exists upon which we must not only do this, but direct a new trial to be granted."

Here there was a case of outrageous misconduct concerning which the court could have no possible knowledge save through the affidavits in support of the charges and yet he refused to hear the charges, and gave them no consideration whatever. And in this extreme case, had there been no error in exclusion of competent evidence on the trial, the court would merely have reversed the judgment without directing a new trial, and remanded the cause for inquiry into, and consideration of the facts alleged in support of the motion for new trial.

The conditions of the case under consideration are quite different from those. In the first place, the affidavits related not to facts occurring during the trial, but to general statements of a juror, made months before the trial and having no reference thereto, indicating a general prejudice against all Italians. There was nothing tending to show, or to raise an inference that the juror knew or had ever heard of the defendant, much less to show that he had any prejudice against him in particular. In the second place, the trial justice did not refuse to entertain the motion and supporting affidavits, but gave counsel a hearing in support of them. He had heard the examination of the juror on his voir dire, had conducted the trial from beginning to end, in such a manner that no exception had been taken to any one of his rulings, or the charge, and in the exercise of his discretion refused to set aside the verdict.

It is contended that the facts alleged in the affidavits showed plainly that the defendant had not had the benefit of trial by a fair and impartial jury that is guaranteed to all persons by the Constitution; that these facts having been undenied must be accepted as true; and that the action of the court in refusing to give effect to them by granting the motion was equivalent to a refusal to entertain them at all.

The argument in support of this contention is founded on the expression heretofore quoted from *Keely v. Moore*, supra, which enumerates among the exceptions to the rule not only those charges of misconduct of the jury which the trial court has refused to consider, but those which he "has

erroneously considered upon an uncontested state of facts."

Broad expressions in an opinion are to be taken in the light of the facts of the case in which they were delivered. None of the cases on which that expression was founded go to the length of the contention. None go further than *Mattox v. U. S.*, supra, which has heretofore been stated fully. The misconduct charged in *Kelly v. Moore* was, as stated, such as tended to "pollute and poison the fountains of justice, which should be rigidly guarded from contamination;" moreover, the facts, of which the trial court could have had no other knowledge than by proof, were so circumstantially and directly stated under oath, that to refuse them effect without any denial might well be regarded as equivalent to refusal to consider them at all. No doubt many cases of the kind might occur in which the refusal of the court to give effect to charges of misconduct in the trial, when supported by affidavit and uncontradicted, would amount to such a manifest abuse of discretion as to subject his action to review and require its reversal. But the conclusion that this must be done in every case where there has been no express contradiction of the supporting affidavits is unwarranted.

Recurring now to the facts of the present case: As has been seen, the charge against the juror was that of a general prejudice against all Italians, made in a loose, general way months before he was called upon to assume the duties of a juror. He had no knowledge of the defendant and it is not pretended that he entertained any prejudice against him as an individual. Had he admitted upon his voir dire that he had formerly entertained and expressed a prejudice against all Italians, but at the same time said he had none such then, and that he was able to consider the case of the defendant fairly, and render an impartial verdict therein, it would hardly be contended that he could have been challenged for cause. Assuming, however, that general expressions, by an American citizen, of prejudice against the people of any other nation or race, made in general conversation and not in contemplation of the performance of his sworn duty as a juror to sit in the trial of a member of such race, would, if unexplained or not disclaimed, render him incompetent, it is sufficient to say that no such case is here presented.

Under the facts of the case, we do not consider that the trial justice was bound to call for evidence disputing the facts alleged, or else grant the motion. The charges of two persons that the juror had expressed his prejudice to them, specified no time, place, or occasion of their utterance. Their contradiction by any other person than the juror himself was plainly impracticable. Affidavits of other persons that they had never heard the juror express such sentiments, or that he had been heard by them frequently to declare his admiration of the Italian people would not traverse the charges. The trial justice had heard the juror, when called for service long after the time of the alleged unsworn declarations, make the statement under oath in answer to direct questions, that he then, at least, entertained no prejudice against the Italian people. Having had the opportunity to observe the demeanor of the juror at the time, he, in the exercise of his discretion, considered it unnecessary to call him for



further examination. Although in the case of general affidavits, such as those under consideration, which admit of no direct denial save by the person under accusation and, therefore, if false could ordinarily be made without fear of conviction of perjury, it would be the safer practice to call upon the impeached juror for an express denial of the particular charge, and probably also to examine the affiants as to the specific time, place, and occasion of the alleged declarations, yet we can not say that the failure of the court to pursue this practice, under all the circumstances of the case, amounted to an abuse of discretion.

A further contention is founded on section 919 of the Code, which reads as follows: "Cause of challenge not available after verdict.—No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury are sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, and such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn." This section, it has been argued, gives the defendant a right to a new trial the denial of which is, therefore, reviewable on appeal the same as any other question of law arising on exception reserved during the trial.

We do not so interpret the meaning and intent of the provision. It gives no new right to the defendant and adds nothing to the discretionary powers which the courts have always exercised in such cases. If not declaratory merely of a long existing rule of practice, it would seem rather a limitation than otherwise, of the ordinary discretionary power of the courts to grant new trials.

Unable to find that there was any abuse of discretion in denying the motion for new trial, which would justify its reversal, the judgment will be affirmed. It is so ordered.

Affirmed.

FRANKLIN H. SEELEY, APPELLANT,

v.

BLANCHE LOWE SEELEY.

INFANTS, CUSTODY OF; FOREIGN DECREE.

1. In proceedings affecting the custody of infants, the question of primary importance is that of the best interests of the infant.
2. The courts of Illinois are without power, in a divorce proceeding brought there, to pass a decree which would deprive the courts of this District from determining the custody of a minor child of the parties who was within this District when the proceedings for divorce were instituted in Illinois and who has continuously remained in this jurisdiction.
3. The "full faith and credit" clause of the Constitution is inapplicable in such case.

No. 1772. Decided December 11, 1907.

APPEAL by petitioner from an order of the Supreme Court of the District of Columbia, Habeas Corpus, No. 439, dismissing a petition for a writ of habeas corpus. Affirmed.

Mr. H. P. GATLEY and Mr. BARRY MOHUN for the appellant.

Mr. HENRY E. DAVIS for the appellee.

Opinion PER CURIAM: This cause had been heard and a conclusion reached, but before the opinion could be delivered by Mr. Justice Mc-

Comas, upon whom that duty devolved, he became ill and died. The case has been resubmitted, by stipulation of the parties, to the two remaining members of the court.

Their views remaining unchanged, the opinion prepared by Mr. Justice McComas is adopted and filed as the opinion of the court. To make perfectly certain what is indicated in the opinion, it is deemed proper to add to the statement that the record expressly shows that the court below founded his award of the custody of the infant upon what he considered, from all the conditions presented by the evidence, his interests and welfare then demanded.

The order is affirmed with costs.

The opinion, as prepared by Mr. Justice McComas, is as follows:

This is a petition in habeas corpus filed by the appellant seeking to obtain the custody of the son of the appellant and of Blanche L. Seeley, his wife, now divorced. This minor was about 12 years of age. The appellant claims the legal right to the custody of the boy by virtue of certain decrees of the Superior Court of Cook County, Illinois, in a divorce proceeding between him and the appellee.

On May 15, 1905, the appellant filed his complaint in the last mentioned court asking an absolute divorce from the appellee who appeared by counsel.

On May 25, 1905, that court passed a decree divorcing these parties and giving the custody of this child, I. Bromley Seeley, to the mother except during the month of July of each year, when the father was to have the custody of the child. On July 21, 1906, this decree was modified and the custody of the child was awarded to the father for the remainder of the year. The appellee refused to obey this decree.

On December 8, 1906, the decree was further modified by awarding to the appellant the custody of the child until the last day of December, 1907. This petition was filed to obtain such custody.

It is admitted this child was born November 14, 1895, and that on May 5, 1903, the appellee, bringing her son with her, left Chicago and came to this District, and that both have continuously resided here since that day and neither have within that period lived in the State of Illinois. The court below considered the case upon the petition and return "and upon the pleadings, testimony and agreed statements of fact orally made in open court" and thereupon dismissed this petition. It is not denied that the decree for a divorce was within the power of the Superior Court of Cook County, Illinois, to pass. The single question in this case is whether such a decree precludes the court below from determining the custody of this child, who was within this jurisdiction when the proceedings for a divorce were instituted in Chicago and who has remained in this jurisdiction ever since. We are of opinion the Chicago court was without power to pass a decree depriving the court below from deciding concerning the custody and care of this infant all the while physically within its own jurisdiction. The welfare of infants is a matter of paramount consideration at all times and under all circumstances. Courts of competent jurisdiction will always extend their arms to protect infants. The

interest of infants is even paramount to the claim of both parents. This is the predominant question to be considered by the tribunal before whom the infant is brought. The rights of the parents must in all cases yield to the interest and welfare of the infant. No certain rule can be laid down but the courts must hold the best interests of the children as of primary importance. Their custody is one largely of judicial discretion and that discretion is never reviewed by an appellate court unless it has been manifestly abused. *Wells v. Wells*, 11 App. D. C., 395; 26 Wash. Law Rep., 71; *Stickel v. Stickel*, 18 App. D. C., 150; 29 Wash. Law Rep., 563; *Slack v. Perrine*, 9 App. D. C., 128; 24 Wash. Law Rep., 374. See, also, *People v. Hickey*, 86 Ill. App., 20; *Kline v. Kline*, 57 Iowa, 386; *People v. Allen*, 105 N. Y., 628.

The full faith and credit clause of the Constitution is not involved in this habeas corpus proceeding. It is unnecessary to discuss other questions raised by appellant's counsel. The order of the court below denying the prayer of the petition and discharging the writ must be affirmed with costs, and it is so ordered.

### Supreme Court of the District of Columbia, HOLDING A DISTRICT COURT.

W. B. LEWIS

v.

#### SCHOONER "LAURIE BROWN."

##### ADMIRALTY; LIBEL FOR SEAMAN'S WAGES; INDEMNITY TO MARSHAL.

1. In an admiralty proceeding in rem instituted in forma pauperis by a seaman, the marshal has no right to delay the execution of a warrant for the arrest of the boat until he can be indemnified against loss if the seizure should be wrongful, or against the expense of the care and custody of the boat pending the adjudication.
2. The proper practice in such case would be for the marshal to make the arrest when the warrant is issued, and if the owner of the vessel fails to give a delivery bond or to pay the money into court, as he may do, and there is reason to believe the boat will necessarily be detained a long time, or if there be any doubt of the libellant making good his cause on final hearing for any reason, then the court may order the marshal to discharge the vessel unless indemnified against the probable loss and expense.

No. 761, District Court. Decided December 27, 1907.

HEARING on a rule against the United States Marshal to show cause why he has not executed a warrant for the arrest of a vessel. Rule made absolute.

Mr. E. HILTON JACKSON for the libellant.

Mr. STUART McNAMARA for the United States Marshal.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case a libel was filed against the said schooner for seaman's wages, in which the libellant claimed the sum of \$39.90. The proceeding being in rem, the libellant asked for process against the said schooner, her boats, tackle, etc., and for judgment for the amount due. The libellant also filed an affidavit showing that he was without means to institute proceedings, or to give bond for costs, and asked that he be allowed to file his petition without payment of the usual

costs or giving security therefor. The petition was presented to the court and an allocatur signed, permitting the process to issue without the usual deposit.

Process was issued and the warrant placed in the hands of the marshal for service on the boat. The process was in the form of a warrant commanding the marshal to arrest the schooner "Laurie Brown" and detain the same until further order of the court, and to warn all persons having any claim, etc., to appear before said court on a day named.

The marshal declined to execute the warrant without being indemnified, because of the fact that he would at once be obliged to incur the expense of a watchman, and possibly liability to loss by taking the boat into custody, and requested some indemnity to protect him against such expense and possible loss. The boat was, therefore, not taken into custody, and a rule was issued against the marshal requiring him to show cause why he should not be ordered to execute the process as prayed for in the original petition herein, without costs, or without giving an indemnity bond.

To this rule the marshal made answer, in which he stated that he was requested to execute the process, and that he declined to do so without some security against his loss in case the libellant should not obtain judgment, or against any further liability which might grow out of a wrongful seizure of the said boat, and further, that if he should seize the boat, it would be necessary to put a watchman in charge at once, and the wages for a watchman were \$2.50 per day, and this cost the marshal was obliged to incur without any security that he would be repaid. He further states that the libellant refused either to guarantee the marshal the costs of a watchman, or to make arrangements himself to pay a watchman. He further states that he is already in litigation for loss sustained by reason of taking a boat under a process and leaving it at the wharf without being in charge of a watchman, and that it has been the practice of his office for a number of years to exact reasonable security in all cases of attachment or other process whereby the possession of property is affected, and that it is impossible to secure insurance against a risk of this kind.

The respondent closes his answer with a prayer that either the libellant be directed to furnish reasonable security to indemnify the respondent against loss on his official bond in the event of a wrongful seizure of the schooner "Laurie Brown," or that the court extend the time of serving the writ until such security can be furnished.

The matter has been argued before the court, and the question to be determined is, Has the marshal a right to delay the execution of a warrant for the arrest of a boat in an admiralty proceeding in rem instituted in forma pauperis by a seaman, until he can be indemnified against loss, if the seizure should be wrongful, or against the expense of the care and custody of the boat pending the adjudication.

The marshal of this District has all the powers conferred upon the marshals of the United States circuit courts, and, generally speaking, they have all the powers usually possessed by the sheriffs under State laws.

In Poe's Pleading and Practice, sec. 683, it is stated that when the goods which the sheriff had

been instructed to seize are claimed by a third party who threatens to sue him if he seizes them, he may very properly refuse to proceed further until the question of ownership is determined, or until he is indemnified against all damages to which he may become liable by executing the writ. If the plaintiff refuses to indemnify him he should make a return to the court, setting out the facts fully, and asking to have the time enlarged for the execution of the writ until indemnity is given. This practice is approved by the court in the case of *Robey v. State*, use of Mallory, 94 Md., 61.

It is claimed by counsel for the libellant that the admiralty rules of this court require the marshal to take the boat first without any security in a case of this kind; and after the arrest that the libellant may, on motion, under Rule 57, be ordered to give the usual stipulation, or that the property arrested may be discharged.

In the present case the libellant, a seaman, instituted the proceeding in forma pauperis, and obtained the issuance of the process without the usual stipulation or payment of costs. It is contended that this rule does not contemplate the extraordinary expense which the marshal would have to incur for a watchman, or the loss which he may suffer by reason of making a wrongful seizure, or by the libellant's failure to maintain his contention that he is entitled to wages, but only applies to the usual costs due and payable to the clerk and marshal or other officers of the court.

It is stated in *Evans' Practice*, 1st edition, 369, that when property levied on is claimed by another, the proper course is for the sheriff to do nothing, but to apply to the court to give him time to return the writ, until one or the other party consents to give a proper indemnity bond.

It seems to be the policy of the common law to give the sheriff all the protection due to a public officer when he acts bona fide within the scope of his duty; and such has been the case for many years in this District.

In *Marsh v. Gold*, 2 Pickering, 289, the court said that "an officer called upon to serve a precept, either by attaching property or arresting the person, if there be any reasonable grounds to doubt his authority to act in the particular case, has the right to ask for indemnity. He is not obliged to serve process, in civil actions, at his own peril, when the plaintiff in the suit is present and may take the responsibility on himself; and it has been decided, that the sheriff has a right to require indemnity of the creditor, when he shall be directed to attach chattels, the property in which may be questionable."

There seems to be, however, a different rule in cases in admiralty for seaman's wages; and that appears to be based upon the peculiar situation of the parties, and is for the protection of the poor man who could have no way to collect his wages, if he could not obtain the necessary services of all the court's officers, without giving to them a bond, or advancing to them the costs in the first instance.

Suits in forma pauperis, or using the technical words in admiralty, upon a "juratory caution," are allowed to be brought in the District Courts of the United States, and the rule in admiralty of this court contemplates the same procedure here, and such has been the practice.

As stated by Mr. Justice Simonton in *Lowndes*

*v. The Phoenix*, 36 Fed. Rep., 272: "There is much to commend this indulgence to poor suitors. It would be abhorrent to a sense of justice to refuse the remedy for a clear right on the only ground that the suitor can not give a bond for costs. But it may be abused. In a port filled with shipping the temptation may be very strong to libel a ship just about to sail, and force the payment of a groundless or extravagant claim. If there be no check in the shape of a stipulation for costs, this may lead to irreparable loss or intolerable wrong."

That case was not brought for the wages of a seaman, but for an alleged injury to a stevedore, and the usual stipulation for costs had been given when the libel was filed; but it was shown that the surety was not satisfactory, and the libellant was required, notwithstanding the affidavit of poverty, to put in additional security within five days; but the court declined even in that case to refuse to hear the plaintiff's claim on the merits, if a proper showing was made at the end of the time fixed that he was unable to furnish the security required.

In *Thomas v. Thorwegan*, 27 Fed. Rep., 400, the court allowed a libellant to maintain suit for personal injuries on giving the juratory caution, without giving security for costs. That, however, seems to be a proceeding in personam.

In the schooner "*Caroline and Cornelia*," 2 Benedict, 105, the rule is referred to and recognized, that seamen may sue in rem for wages due for services on board an American vessel, without being required to give security for costs in the first instance; but recognizing, also, that the court may, for adequate cause, shown on motion, with notice to the libellant, after the arrest of the property, require the libellant to give the stipulation for costs, or that the vessel be discharged, which is practically the same as Rule No. 57 in this court.

In the case of the "*Shelbourne*," 30 Fed. Rep., 510, the court says: "The practice in admiralty is to exempt seamen from giving security for costs on account of their presumed inability to do so."

I am unable to find any authority which denies to a seaman the right to file his libel and have process issued and served, if he makes the proper showing that his claim is for services as a seaman on board an American vessel.

The marshal can usually protect himself by proper inquiry, and the exercise of caution, in a case of this kind; and if, for any reason, the marshal believes that he will be put in serious jeopardy by the seizing of a vessel, he may at once state his reasons in a petition or motion, and ask to have the usual stipulation for costs given, or the property discharged from arrest.

Where vessels are about to sail, and the seaman has a bona fide claim for wages for services already rendered on said vessel, but is in a port where he may not have acquaintances, or any facilities for giving security, and only a small sum is due him, it would seem that it would be a great hardship for him to allow the vessel to sail and leave without his hard-earned wages; and, hence, the law and the rule have been enacted to secure to him a remedy without giving, in the first instance, security for any costs, either those of the marshal or the clerk.

The costs that would be incurred by a watchman, after a vessel has been seized, if the claim is

bona fide, and is maintained in the proceeding, would be no doubt chargeable against the vessel with the other costs in the case.

The owners of vessels libeled for seaman's wages will usually avail themselves of the benefit of the rules by either paying the money claimed into the court, to take the place of the vessel until the contention is decided, or by giving a bond, and having the property released, leaving the litigation to go on against the substituted security.

The arrest of a vessel, and the detention for only time enough for thorough inquiry into the nature of the case, can very rarely impose any serious damage upon the marshal; and after an examination of the various admiralty rules, as well as the authorities cited to me, I think the proper practice should be for the Marshal to make the arrest when a proper warrant is issued; and if the owner of the vessel fails to give the delivery bond, or to pay the money into court, as provided by the rules he may do, and there is any good reason to think that the boat will necessarily be detained a long time; or if there be any doubt as to the libellant making good his cause on final hearing, for any reason, then the court may order the marshal to discharge the vessel, unless he is indemnified against the probable loss and expense.

In this case the boat was not seized; and no special reason is shown why the libellant can not, or may not, maintain his claim; and no circumstances show any extraordinary peril to the marshal from taking the boat into his custody as directed by the warrant.

He will, therefore, be directed to execute the process as prayed.

**Contracts—Cancellation.**—A mistake in adding a column of figures representing the extension of items for the furnishing of which a price has been asked, the result of which is adopted as the basis of a bid for the contract of furnishing the material, is held, in *Steinmeyer v. Schroepel* (Ill.), 10 L. R. A. (N. S.), 114, not to be such a mistake as can be made the basis of a suit in equity to cancel the contract after the acceptance of the bid.

**Bankruptcy.**—A creditor of one discharged in bankruptcy is held, in *Ruhl-Koblegard Co. v. Gillespie* (W. Va.), 10 L. R. A. (N. S.), 305, to have no right to maintain a suit to set aside an alleged fraudulent transfer of the property of the bankrupt, although such transfer may have been made more than four months prior to the filing of the petition in bankruptcy.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

C. Clinton James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Thomas Cissel, Deceased.  
No. 14,668. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Louise Cissel, it is ordered this 3d day of January, A. D. 1908, that Mary Cissel, William Cissel, Ethel Cissel, Paul Cissel, and Sheridan Cissel, infants, and all others concerned, appear in said court on Monday, the 3d day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

1-3t

J. J. Waters, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Alfred Pope, Deceased.  
No. 14,862. Administration Docket, 87.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Hannah Pope, it is ordered this 3d day of January, A. D. 1908, that Alfred Hubert Thompson, and all others concerned, appear in said court on Friday, the 7th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

1-3t

M. J. Keane, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Benjamin Smith, Deceased.  
No. 14,911. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Langley, it is ordered this 2d day of January, A. D. 1908, that the unknown heirs at law and next of kin of Benjamin Smith, and all others concerned, appear in said court on Tuesday, the 4th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

1-3t

George E. Fleming, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Henry C. Burch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. UNION TRUST COMPANY, by George E. Fleming, Secretary; by George E. Fleming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,068. Administration [Seal.]

1-3t

**Legal Notices.**

**E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.  
In re the Extension of Twenty-third Street Northwest  
to Kalorama Road. District Court, No. 717.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved January 9, 1907, entitled "An act authorizing the extension of Twenty-third street northwest to Kalorama Road," have filed a petition in this court praying the condemnation of the land necessary for the extension of Twenty-third street northwest from U street to Kalorama Road, so as to include so much of lots nine and twenty-four, L. R. Tuttle's subdivision, and lots one and eighteen, block twenty, Kalorama Heights subdivision, as lie between two parallel curved lines fifty feet apart, the easterly of which begins at a point on north line of lot nine, L. R. Tuttle's subdivision, and fifty feet easterly from the northwest corner thereof and which passes thence in a southeasterly direction on a circular arc with a radius of five hundred and twelve feet, more or less, to a point on the west line of lot twenty-four of said subdivision, and fifty-five feet, more or less, from the southwestern corner of said lot, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of Twenty-third street northwest to Kalorama Road and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages plus the cost of this proceeding upon the land abutting upon the said street to be extended, and also upon all other pieces or parcels of land which the jury may find will be benefited by the extension of the said street. It is by the court this 27th day of December, A. D. 1907, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 28th day of January, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 28th day of January, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States Marshal, or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, and upon the tenants and occupants of the same, before the said 28th day of January, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-11

[Seal] BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-11

**George E. Fleming, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Elizabeth Strobel, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. UNION TRUST COMPANY, by George E. Fleming, Secretary; by George E. Fleming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,101. Admn. [Seal.] 1-81

Justice blanks of every description for sale at this office.

**Legal Notices.**

**E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.  
In re the Extension of Park Place.  
District Court, No. 739.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved March 1st, 1907, entitled "An act authorizing the extension of Park Place," have filed a petition in this court praying the condemnation of the land necessary for the extension of Park Place along the west line of Soldiers' Home lands with a width of forty feet, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying, also, that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the said extension of the said Park Place, and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, plus the cost of this proceeding, upon the land abutting upon the said street to be extended, and also upon all other pieces or parcels of land which the jury may find will be benefited by the extension of the said street. It is, by the court, this 27th day of December, A. D. 1907, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 27th day of January, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and on six secular days in The Washington Evening Star, The Washington Herald, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 27th day of January, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States Marshal or his deputies upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, and upon the tenants and occupants of the same before the said 27th day of January, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-11

**C. H. Stanley and H. S. Matthews, Solicitors**

**In the Supreme Court of the District of Columbia.  
Roger B. Berry, Complainant, v. Mary L. Berry et al.,  
Defendants. No. 27,142. In Equity. Docket No.**

Charles H. Stanley and Henry S. Matthews, trustees herein, having reported the sale of part of subdivision lot 21 in square 367 in the city of Washington, District of Columbia, being the north 37.100 feet thereof, and part of subdivision lot 22 in said square, being the south 12 and 31.100 feet thereof, being improved by dwelling known as No. 1315 10th street northwest, to Ella Simonds for the sum of \$2,000.00 cash, and all of subdivision lot numbered 4 in square 447 in said city and District, improved by dwelling known as No. 607 N street northwest, to Solomon Berliner for the sum of \$1,500.00 cash, it is, by the court, this 2d day of January, A. D. 1908, ordered that said trustees be, and they are hereby authorized to accept said offers, and upon compliance with the terms of said sales, said sales shall stand confirmed, unless cause to the contrary be shown on or before the 3d day of February, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks before the last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 1-81

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

Gus A. Schuldt, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Loense, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of December, 1907. GUS A. SCHULDT, Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,927. Administration. [Seal.] 1-3t

E. H. Thomas and A. B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Opening of an Alley in Square 743, in the District of Columbia. District Court, No. 753.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1808 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square 743, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of the aforesaid alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 27th day of December, A. D. 1907, ordered, that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 15th day of January, A. D. 1908, at 10 o'clock, A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 15th day of January, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States Marshal or his deputies upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 15th day of January.

[Seal] A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 1-1t

**SECOND INSERTION.**

A. Coulter Wells, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William Franklin Lowellen, Deceased.  
No. 14,907. Administration Docket 37.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary Jane Lowellen, it is ordered this 27th day of December, A. D. 1907, that Colman Lowellen, John N. Lowellen, Levarah Jenkins, Ada Lowellen, John Calvert, Benjamin Lowellen, James W. Lowellen, Maggie Williams, Sarah Malory, Vernie Lowellen, Lizzie Lowellen, Charles Hoard, W. F. Calvert, Jasper Newton Calvert, Cora E. C. Baker, and Mary J. C. Arbuthnot, and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Tuesday, the 28th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-3t

**Legal Notices.**

James F. Mullaly, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Moses Howland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of December, 1907. CATHARINE ELLARD, 1745 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,797. Admn. [Seal.] 52-3t

Ellen S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Anna Smith Mallett, Deceased.

No. 14,901. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by Frank B. King, named as executor therein, it is ordered this 24th day of December, A. D. 1907, that Lucy Smith, Hawleyville, Conn.; Joseph Smith, Boston, Mass.; Alice Smith Cook, Brattleboro, Vermont; Emily Peck Kellogg, Bridgeport, Conn.; Mary J. Woodruff, Bridgeport, Conn.; Joseph Kissam, Long Island, N. Y.; Henry Kissam, Long Island, N. Y.; Phillip Kissam, Long Island, N. Y.; George Kissam, Long Island, N. Y.; Chester Park, Long Island, N. Y.; Sarah Josephine Baylis, New York City; Isabel Baylis, New York City; Henry L. Foote, Brookfield Center, Conn.; Mrs. Frederick S. Irish, Brookfield Center, Conn.; John A. Peck, Pelham Manor, N. Y.; William Peck, New York City; William Foote, Mount Kisco, N. Y.; Cornelia Foote Dunning, Bethel, Conn.; Lizzie Keeler Van York, Bridgeport, Conn.; Clara Keeler, Bridgeport, Conn.; Clarence Keeler, Danbury, Conn.; Frank Hawley, Danbury, Conn.; Herman Keeler, Rome, N. Y.; Luther Cox, San Francisco, Cal.; Joseph C. Green, Wellington, Mass.; Sarah S. Steiner, Baltimore, Md.; Emory W. Fenn, Waterbury, Conn.; Esther Augusta Fenn, Waterbury, Conn.; J. Richard Smith, Waterbury, Conn.; Anson P. Smith, Sandy Hook, Conn.; Alice H. Clark, Shelton, Conn.; Mary A. Greene, Edward K. Smith, Lucy A. Smith, Mrs. Sylvia Nichols Northrop, Newton, Conn.; Miss Sarah James Nichols, Long Hill, Conn.; Mrs. Catherine Jackson Mallett, Monroe, Conn.; John Jackson, Stepney Depot, Conn.; Charley Jackson, Stepney Depot, Conn.; Edward Sherman, Bridgeport, Conn.; Stephen Gregory Nichols, Mary Shelton Fairchild, Bridgeport, Conn.; Wilson Hurd, Long Hill, Conn.; John Hurd, Long Hill, Conn.; Edward Hurd, Monroe, Conn.; Jean Shelton, Bridgeport, Conn.; Anna G. Shelton, Bridgeport, Conn., a minor; Robert Philo Shelton, Bridgeport, Conn., a minor; and all the unknown heirs at law, next of kin, and all others concerned appear in said court on Wednesday, the 29th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-3t

Coldren & Fenning, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Adolph Wolschendorff.  
Administration, No. 14,895.

Application having been made herein for letters of administration on the estate of said deceased, by Joseph Gawler, it is ordered this 20th day of December, 1907, that the unknown heirs at law and next of kin, and all others concerned, appear in said court on Thursday, the 30th day of January, 1908, to show cause, if any they have, why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-3t



**Legal Notices.**

**Hargrove & Morris, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Massachusetts, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Anna Marie Colman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof, legally authenticated, to the subscribers, on or before the 19th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of December, 1907. CARROLL D. WRIGHT, Worcester, Mass., JOHN BRUCE MCPHERSON, 11 Arlington st., Cambridge, Mass. Attest: JAMES TANNER, Clerk of the Probate Court. No. 14,708. Administration. [Seal.] 52-3t

**Tracy L. Jeffords, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Francis M. Cox, Complainant v. John W. Babson and Others.** No. 27,014. Equity Doc. 60.

The object of this suit is to secure delivery to complainant of his five hundred dollar promissory note to defendant Babson, and to enjoin sale under deed of trust securing same, and to indemnify complainant for an incumbrance of \$2,000 on property purchased. On motion of the complainant, it is this 23d day of December, 1907, ordered that the defendant, Thomas K. Martin, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by K. P. Belew, Asst. Clerk. 52-3t

**E. H. Jackson, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Frederick Stutz, Deceased.**  
 No. 14,132. Adm. Doc.

It appearing to the court service of the substance of the issues ordered to be tried in the above entitled cause has been returned "not to be found" as to Margaret Diederick, it is, this 23d day of December, 1907, ordered, that the substance of the said issues, and the date for the trial thereof, which is hereby set for the 27th day of January, A. D. 1908, shall be published in The Washington Herald newspaper and The Washington Law Reporter, once a week for a period of not less than four weeks from the date hereof. Was the paper writing propounded as the last will and testament of Frederick Stutz, dated April 9, 1908, and the paper writing propounded as the first codicil thereto, dated January 4, 1906, and the paper writing propounded as the second codicil thereto, dated December 20, 1905, executed by said Frederick Stutz in due form of law? Was the said Frederick Stutz at the time of the making of either said will, or either of said codicils, of sound and disposing mind and capable of making a valid deed or contract? Was the execution of either said will or either of said codicils by the said Frederick Stutz procured by the fraud, undue influence, or [Seal] coercion of Charlotte Eberbach, George F. Stutz, John A. Stutz, or Pauline Bleck, or any other person or persons? ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-3t

**Wm. M. Offley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry P. (sometimes known as Harry P.) Tharp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of December, 1907. WALTER J. THARP, Executor, 812 F st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,801. Administration. [Seal.] 52-3t

**Legal Notices.**

**Harry G. Kimball, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Charles H. Adams, Deceased.**  
 No. 14,875. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Mildred B. Jorgensen, it is ordered this 23d day of December, A. D. 1907, that Albert H. Adams, Elvira H. Adams, Mrs. Caroline A. Griffith, Howard O. Adams, and the unknown heirs at law and next of kin of Charles H. Adams, deceased, and all others concerned, appear in said court on Wednesday, the 29th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-3t

**John B. Larnar, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charlotte S. Preinkert, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of December, 1907. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, by John H. Larnar, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,128. Administration. [Seal.] 52-3t

**THIRD INSERTION.**

**A. E. Berry, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Edgar P. Berry, Deceased.**  
 No. 12,445. Administration.

Upon consideration of the report of Albert E. Berry, administrator, filed herein the 13th day of November, 1907, setting forth the sale of real estate as follows: First, lot numbered 5 in Jones and Cragin, assignees, subdivision of part of square numbered 1282, being known as No. 3058 R street N. W., sold to Alexander S. Stewart at and for the sum of five thousand and twenty-five (\$5,025) dollars, he being the highest bidder. Second, an undivided one-third interest in part of square numbered 1282, described as follows: Beginning for the same at a point on the east side of 31st street 141.25 feet north of the northwest corner of an alley thirty feet wide, in said square, laid out by Harriet Williams, and running thence easterly and at right angles to 31st street 231.18 feet, more or less, to the west boundary of a parcel of land conveyed to John C. Smith by deed dated October 20, 1841, and recorded in liber W. B. 86, folio 451, of the land records of the District of Columbia; thence with said line north, 16 degrees west, 106.79 feet, more or less, to the south boundary line of the property of the late Brooke Williams; thence westerly with said boundary line 236.39 feet to 31st street, and thence south with said street 112.65 feet, more or less, to the beginning; improved by a brick dwelling known as 1657 31st street N. W., was sold to S. Sewall Clisel at and for the sum of four thousand, five hundred (\$4,500) dollars. It is this 19th day of December, 1907, adjudged, ordered, and decreed, that the sales reported be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before the 18th day of January, 1908. Provided that a copy of this order shall be published at least once each week for three consecutive weeks before the latter date in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 51-3t



**Legal Notices.**

**Hamilton & Colbert and Yerkes & Hamilton, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a., on the estate of John B. Quinn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of December, 1907. JOHN J. HAMILTON, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,886. Administration. [Seal.] 51-8t

**Tucker & Kenyon, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edwin A. McIntire, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of December, 1907. LETTIE F. MCINTIRE; ELLWOOD W. MCINTIRE, 224 C st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,913. Administration. [Seal.] 51-8t

**J. J. Darlington, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary A. Ellis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 16th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 16th day of December, 1907. CHARLES B. BAYLY, 937 Pa. ave. N. W.; JOSEPH J. DARLINGTON, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,900. Administration. [Seal.] 51-8t

**Campbell Carrington, Irving Williamson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alice B. Goldsborough, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of December, 1907. JOHN W. INSCOE, 1110 8th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,820. Administration. [Seal.] 51-8t

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel G. Ward, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of December, 1907. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,851. Administration. [Seal.] 51-8t

**Legal Notices.**

**Wm. C. Martin, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Loulae Coleman Robain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of November, 1907. JAMES H. COLEMAN, 1637 Vermont ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,690. Admn. [Seal.] 51-8t

**John J. Hemphill, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of North Carolina, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph H. Hackburn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of December, 1907. E. B. HACKBURN, New Bern, N. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,896. Admn. [Seal.] 51-8t

**B. F. Leighton, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Katherine M. Ruppert, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Andrew Coyle, Deceased, Defendants.**

No. 27,448. In Equity.

The object of this suit is to establish title by adverse possession to lot sixty-one (61) of T. Franklin Schneider's subdivision of square four hundred and eighty-two (482), as per plat recorded in book 17, folio 122, of the records of the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 4th day of December, A. D. 1907, ordered that the defendants cause their appearance to be entered herein on or before the first Tuesday of March, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post twice a month for the months of December, 1907, January and February, 1908. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk.

dec 6-13 '07; Jan 3-10; Feb 6-13 '08

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of John Fanarty, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 15th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares, or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of December, 1907. F. WALTER BRANDENBURG, by Brandenburg & Brandenburg, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,099. Administration. [Seal.] 51-8t

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

**Lorenzo A. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Holmes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of December, 1907. EVERETT P. RIDER, 404 7th st. N. W.; WARREN L. PUSHAU, 124 Quincy Place N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,904. Administration. [Seal.] 51-St

**W. B. Reilly and Edwin Forrest, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Harry F. Scott, Complainant, v. Alice B. Scott,**  
**Howard Watkins, Defendants.**  
 Equity, No. 27,147.

The object of this suit is to obtain a divorce from the bond of marriage with the defendant, Alice B. Scott, on the grounds of adultery. On motion of the complainant by William B. Reilly and Edwin Forrest, his solicitors, it is this 11th day of November, A. D. 1907, ordered that the defendant, Howard Watkins, co-respondent, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided that a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The [Seal] Washington Herald before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 51-St

**Edward T. Semans and William A. McKenney,**  
**Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Josephine Reeves Shelley, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 17th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 17th day of December, 1907. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Edward T. Semans and William A. McKenney, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,888. Administration. [Seal.] 51-St

**Ralston & Siddons, Attorneys**

**In the Supreme Court of the District of Columbia.**

**Franklin P. Serrin v. Thomas R. Martin et al.**  
 No. 27,085. Equity Docket 60.  
 ORDER OF PUBLICATION.

The object of this suit is to procure a decree declaring that the defendants have no lien upon the property described in the bill of complaint and directing a release or cancellation of the power of attorney affecting said property, also described in said bill. On motion of the complainant, it is, this 13th day of December, A. D. 1907, ordered that the defendant, Thomas R. Martin, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order shall be published at least once a week for three successive weeks in The Washington Law Reporter and The

[Seal] Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 51-St

**Legal Notices.**

**Alvin L. Newmyer, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**In re George Coblenzer. Change of Name to Morris George.** Equity, No. 27,525.

Notice is hereby given that on the 16th day of December, A. D. 1907, a petition was filed in the Supreme Court of the District of Columbia by George Coblenzer praying a decree changing his name to Morris George, for reasons set forth in said petition. JOHN R. YOUNG, Clerk. 51-St

**FOURTH INSERTION.**

**Howard Boyd, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Charles E. Tribby v. Caroline S. Bowles Murphy, alias Carrie S. Bowles Murphy, and the Unknown Heirs, Devisees, and Allenees of John Arnot, Deceased,**  
**Defendants.** Equity No. 27,303.

The object of this suit is to establish title in the complainant by adverse possession to lot seven (7) in the subdivision of square three hundred and eight (308) in the city of Washington, District of Columbia, as recorded in subdivision book 10 at page 92, of the records of the surveyor of said District. On motion of the complainant, by Howard Boyd, his attorney, it is this 21st day of November, 1907, ordered that Caroline S. Bowles Murphy, otherwise known as Carrie S. Bowles Murphy, and the unknown heirs, devisees, and allenees of John Arnot, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month and twice a month during the next two months in The

[Seal] Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. nov22-28; dec6; jan8-10; feb7-14

**FIFTH INSERTION.**

**C. Clinton James, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**William E. Mooney, Complainant, v. Virginia B. Chilton et al., Defendants.** Equity, No. 27,474.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to part of original lot one (1) in square six hundred and fifty (650), beginning for the same at the southeast corner of said lot and square and running thence north along the line of Half street, 110 feet, 6 inches to the north line of said lot; thence west 61 feet; thence south 55 feet, 3 inches; thence east 25 feet; thence south 55 feet, 3 inches to the line of N street; thence east 36 feet to the place of beginning, Washington, District of Columbia. On motion of the complainant, it is, this 6th day of December, A. D. 1907, ordered that the defendants, Daniel Brent, Anne Brent, Pauline Brent, Francis C. Brent, Catherine I. M. Brent, Robert Brent, Margaret E. Saltmarsh, Henrietta B. Heiskell, Michael M. D. Brent, Isabel C. Helden, Anna C. Robb, Mary A. Brent, Sophy C. Brent, Joseph P. Farley, Robert B. Mosher, Agnes K. Brent, E. Brent Murphy, Jennie Brent, John K. Papin, Ann Maria Brent, Ada M. Hill, Eleanor Speer, Cecil Morgan, George A. Diggs, A. Percy Diggs, Daniel Diggs, George Livingston, Anne Rutgers, Cornelia Pierce, Eliza Pierce, Livingston Young, I. Fenwick Young, Alexander Mosher and Mary E. Brent, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs or devisees or allenees of such of the above-named defendants as are dead, and the unknown heirs or devisees or allenees of Daniel Brent, William Brent, Robert Brent, John Brent, Catherine Diggs, Samuel Elyington, cause their appearances to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in four successive weeks prior to said return day in The Washington Law Reporter and The Evening

[Seal] Star. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 49-51

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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### DECISIONS BY THE COURT OF APPEALS.

**Replevin—Guardian and Ward—Pledge of Ward's Property Without Authority of Court.**

In *Easterling v. Horning*, the appeal was from a judgment for defendant in an action brought by a guardian to recover certain jewelry alleged to be the property of his ward. It appeared that the jewelry had been pawned to the defendant by a former guardian of the minor without any order of the Probate Court authorizing her so to do. The case involved the construction of sections 165 and 1135 of the Code, and the court holds that a guardian is without power to mortgage or otherwise dispose of property of his ward without an order of court authorizing him to do so. The judgment is reversed, the court holding that instead of directing a verdict for defendant the trial court should have directed a verdict for the plaintiff. Mr. Justice Barnard, who sat with the Court of Appeals in the place of Mr. Justice Robb, delivered the opinion of the court.

**Insurance—Secs. 647 and 650 of Code Not Applicable to Local Assessment Companies.**

In *American Home Life Insurance Company et al. v. Drake* the appeal was from a decree of the court below sustaining a demurrer to a bill to enjoin the appellee as superintendent of insurance, from taking action against appellants under section 648 of the Code for failure to comply with the requirements of sections 647 and 650 of the Code. Appellants are incorporated under the laws of this District to transact the business of life, sick benefit and accident insurance upon the assessment plan, and contended that sections 647 and 650 did not apply to them and this contention is sustained by the Court of Appeals in an opinion by Mr. Justice Robb, reversing the decree below.

### Patents—Suit to Enjoin Infringement—Comity.

In *Drill v. Washington Railway and Electric Company*, the appeal was from a decree dismissing the bill of complaint in a suit to enjoin the infringement of a patent. The court below followed a decision of the United States Circuit Court of Appeals in a case in which the same questions were involved and in which appellants were complainants, and the Court of Appeals holds that the court below properly applied the doctrine of comity in thus disposing of the case. The opinion was prepared by Mr. Justice McComas, but had not been filed at the time of his death, and on re-submission of the case his opinion was adopted and filed as the opinion of the court.

### Foreign Administrators Not Subject to Suit in This District.

In *Bryan v. Curtis*, the appeal was by a trustee in bankruptcy appointed in Texas from a decree dismissing a bill filed by him against an administratrix of the deceased bankrupt, also appointed in Texas, and the Secretary of the Treasury, to secure possession of the proceeds of a judgment recovered by the administratrix in the Court of Claims. The court below held that the suit could not be maintained in this District, and dismissed the bill; and its decree is affirmed by the Court of Appeals in an opinion by Mr. Justice Van Orsdel. The opinion derives additional interest from the fact that it is the first judicial deliverance by Mr. Justice Van Orsdel as a member of the court. It is reported in this issue.

The decision in the case of *O'Dwyer v. Northern Market et al.*; will be noted next week. The opinion is by Mr. Justice Robb, and reverses the judgment below.

In noting the sections of the Code of this District cited and construed, in the index for the 1907 volume of THE LAW REPORTER sent to our subscribers last week, two errors were made. Sec. 908, making persons inciting, etc., to crime principals, referred to in *Maxey v. United States*, 35 Wash. Law Rep., 446, is incorrectly given as sec. 968; and sec. 1058, relating to depositions de bene esse, cited in *Welch v. Lynch*, 35 Wash. Law Rep., 398, is incorrectly given as sec. 1068.

### Limitation of Time for Argument of Cases in Court of Appeals.

The following order was promulgated by the Court of Appeals of this District on January 9, 1908:

In view of the large number of cases on the calendar awaiting hearing, and in consideration of the time which must necessarily be consumed if the full four hours are taken in the argument as allowed by section 2 of Rule VIII, it is by the court this day ordered that said section 2 of Rule VIII be, and the same is, hereby suspended; and until further order only one hour on each side shall be allowed in the argument, unless by special leave the time is extended by the court before the argument is commenced; but such time may be apportioned between counsel on the same side at their discretion. In all cases, however, a full and fair opening must be made.

## Court of Appeals of the District of Columbia.

MORGAN BRYAN, TRUSTEE IN BANKRUPTCY, APPELLANT,

v.

ALICE V. CURTIS, ADMINISTRATRIX OF  
WILLIAM R. CURTIS ET AL.

FOREIGN ADMINISTRATORS; NOT LIABLE TO SUIT IN THIS DISTRICT.

1. An executor or administrator can not sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained.
2. Sec. 823, Code D. C., providing that a foreign administrator may bring suit in this District, does not, by implication, provide that suit may be maintained here against such administrator.
3. A decree dismissing a bill filed by a trustee in bankruptcy appointed in Texas against an administrator of the deceased bankrupt, also appointed in that State, to secure possession of the proceeds of a judgment recovered by the administratrix in the Court of Claims, affirmed.

No. 1788. Decided January 7, 1908.

APPEAL by plaintiff from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,697, in suit for the appointment of a receiver, etc. Affirmed.

For opinion below, see 35 Wash. Law Rep., 34.

Mr. GEO. E. HAMILTON and Mr. JOHN J. HAMILTON for the appellant.

Mr. A. A. HOEHLING, Mr. D. W. BAKER, and Mr. JESSE C. ADKINS for the appellees.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This suit was brought in the Supreme Court of the District of Columbia, sitting in equity, by the appellant, plaintiff below, as trustee in bankruptcy of the estate of William R. Curtis against Alice V. Curtis, administratrix of the estate of William R. Curtis, and Leslie M. Shaw, Secretary of the Treasury, defendants, on May 31, 1904.

The bill alleges that William R. Curtis filed two suits in the Court of Claims of the United States, under the act of Congress approved March 3, 1893, to recover for depredations committed by the Comanche Indians. On May 17, 1899, the said Curtis, a resident of the State of Texas, was duly adjudged a bankrupt in the course of proceedings instituted in the United States District Court for the Northern District of Texas, and the plaintiff Bryan was appointed trustee of his estate. After the proceedings in bankruptcy had been instituted, Curtis died intestate and the defendant, Alice V. Curtis, was duly appointed administratrix of his estate by the county court of Clay County, Tex., where Curtis resided at the time of his death.

On March 29, 1902, Alice V. Curtis, as administratrix, was substituted as the party plaintiff instead of William R. Curtis in the cases then pending in the Court of Claims. On June 1, 1903, before the determination of the suits by the Court of Claims, the plaintiff filed in each of said suits certified copies of the order appointing him trustee in bankruptcy and of his bond given in the bankruptcy proceedings, at the same time notifying counsel for the plaintiff in said suits of the filing of the same. It appears that no notice of the filing of the order and bond in the bank-

ruptcy proceedings was taken by the Court of Claims, and judgment was rendered in each case in favor of the defendant, as administratrix. The portion of said judgments adjudged by the Court of Claims to be due to the administratrix, excluding the sum adjudged to the plaintiff's attorneys as fees, amounted to the sum of \$5,686. On April 19, 1904, plaintiff filed a petition in said cases in the Court of Claims setting up the proceedings in bankruptcy and asked that the judgments be reopened and that he be substituted instead of William R. Curtis to the exclusion of said administratrix, and that the judgments be rendered in his favor as trustee. The Court of Claims declined to reopen the judgments, and on April 27, 1904, Congress appropriated money for the payment of said judgments, among others, instructing the Secretary of the Treasury to pay the same out of any moneys in the treasury not otherwise appropriated.

The bill further alleges that by virtue of the proceedings in bankruptcy all the right, title, and interest of the said William R. Curtis in and to the said Indian claims, and the judgments that might be rendered therefor, passed to, and vested in, the plaintiff as trustee; and that the appointment of the administratrix vested no title in her and gave her no right to collect the said judgments. The plaintiff prayed that the defendants be made parties and that the Secretary of the Treasury be restrained from making payment to said administratrix, and that the plaintiff be decreed to be entitled to collect and receive the payment of said judgments to be administered according to the provisions of the bankrupt act; that the Secretary of the Treasury be authorized and directed to pay to the plaintiff the full amount of said judgments, and that the defendant administratrix, her attorneys, and agents be forever restrained and enjoined from collecting and receiving the same.

A demurrer was filed by the defendant Shaw, on the grounds, first, of want of equity in the bill; second, that he could not be sued as an officer of the United States, and third, that the defendant, Alice V. Curtis, is shown to be a resident of the State of Texas and there is no averment that she has any property or credits in the District of Columbia other than the judgments in question. In answer to the rule to show cause why the injunction should not issue, defendant set up the proceedings in the Court of Claims, and the non-residence of the said administratrix, with the consequent want of jurisdiction over her and the subject-matter in controversy. An amendment to the bill alleges the residence of the administratrix to be in the State of Texas, and asks for an order of publication against her. The appointment of a receiver was also prayed for, which was allowed, and a receiver was appointed. The order of publication was granted, but no restraining order seems to have been issued.

Alice V. Curtis, administratrix, specially appeared for the purpose of objecting to the jurisdiction of the court, and her verified motion alleges the fact concerning her residence and administration in Texas, and that she had never taken out letters of administration in the District of Columbia. This motion was denied, and she was given leave to plead to the bill of complaint. On March 9, 1906, she filed her separate demurrer and answer, appearing specially

and reserving her objection to the jurisdiction of the court. She alleged in her answer, among other things, that she had not been found or served with process in the District of Columbia, and that she was sued in her official capacity as administratrix of the estate of William R. Curtis, deceased, by virtue of the appointment of the county court in and for Clay County, State of Texas, the place of domicile of said intestate at the time of his death. She denied the right of the plaintiff to bring suit against her as such foreign administratrix in the courts of the District of Columbia. She answered at length the allegations of the bill, admitting substantially the proceedings alleged to have been had in the Court of Claims, alleging the title to the fund here in controversy to be in her and not in the plaintiff as trustee in bankruptcy, alleging that the plaintiff, as trustee in bankruptcy, acquired no right, title, or interest in the subject-matter embraced in the bill, either under the provisions of the bankruptcy act or the several amendments thereto. The further allegations of the answer are not material to the present inquiry.

On the hearing, the court sustained the demurrer and entered a final decree vacating the order appointing a receiver and dismissing the original and amended bills of complaint, with costs. From this judgment the plaintiff has appealed to this court.

At the very threshold of this inquiry we are confronted with a question of jurisdiction which, we think, conclusively disposes of the appeal. The defendant Curtis, as administratrix, was authorized under the act of Congress (26 Stats., 851), to prosecute the claims of her deceased husband to judgment in the Court of Claims by virtue of letters of administration issued to her by the county court of Clay County, Texas. No probate proceedings were had in the District of Columbia, ancillary or otherwise, to enable her to prosecute these suits, and none were necessary.

It is well settled in this country that an administrator or executor can not sue or be sued in his representative capacity in any other jurisdiction than the one of his appointment, except where it is permitted by the laws of the jurisdiction in which the suit is sought to be maintained. *Vaughn v. Northup*, 15 Peters, 1. In *Plumb v. Bateman*, 2 App. D. C., 156: 22 Wash. Law Rep., 20, adopting the rule announced by the Supreme Court of the United States in an unbroken line of decision, this court said: "An executor or administrator is neither entitled to sue or liable to be sued outside of the jurisdiction which has conferred his authority upon him and to the courts of which he is alone amenable, unless there is express statutory provision to permit such suit by the legislative power of the jurisdiction where the suit is sought to be maintained."

Section 329 of the revised Code of the District of Columbia provides that an administrator or executor acting under letters of administration from a competent court of a foreign jurisdiction may bring suit in the District of Columbia by virtue of that authority alone. This right, however, of a foreign administrator or executor to sue in the District, does not imply, in the absence of statutory authority, that suit can be maintained in the courts of the District against such admin-

istrator or executor. It has been held, both by this court and the Supreme Court of the United States, in a number of instances, that an administrator or executor acting under such authority can not be sued in the District of Columbia. This is in accord with the well-settled rule of law that executors and administrators are accountable only to the forum of administration. Of equal force is the rule "that an administrator is exclusively bound to account for all the assets he receives, under and by virtue of his administration, to the proper tribunals of the Government from which he derives his authority, and the tribunals of other States have no right to interfere with or control the application of these assets according to the *lex loci*." *Vaughn v. Northup*, supra.

In the present case it is contended by counsel for plaintiff that the title to the funds in the treasury, appropriated for the payment of the judgments rendered by the Court of Claims, by operation of law became vested in the trustee in bankruptcy during the lifetime of William R. Curtis, and that the defendant, under her appointment as administratrix, acquired no title thereto, and is not entitled to receive the same. In other words, it is contended that this is a suit only for the possession of the funds. By the act of Congress making the necessary appropriation, the Secretary of the Treasury holds this money with direction to pay it to the defendant Curtis, as administratrix, in satisfaction of judgments in her favor rendered by a court of competent jurisdiction. Plaintiff, as trustee in bankruptcy, derives whatever authority he may have to contest the question of possession from the order of the court appointing him as such trustee. Defendant Curtis, as administratrix, is insisting that by virtue of the letters of administration, issued to her by the county court of Clay County, Texas, as the legal representative of the intestate, William R. Curtis, title to the judgments, and the proceeds thereof, is vested in her. It is not apparent just how the right of possession can be here decided, without first determining in whom title is vested. The problem of title lies at the very basis of this controversy. It is, therefore, a matter peculiarly belonging to the tribunals from which the respective parties derive their authority to appear and assert title to the funds in question. The plaintiff failed to intervene in the Court of Claims, and allowed the judgments to run in favor of the administratrix. The fund, therefore, has become so far identified as part of the intestate's estate, of which she is the legal representative, that no individual creditor, or trustee in bankruptcy representing all the creditors of the bankrupt's estate, is entitled to receive it, except upon a decree, entered by a court of competent jurisdiction, in an action to which the administratrix has been properly made a party. That Alice V. Curtis, as administratrix, is a proper party defendant in an action such as is here sought to be maintained has been practically settled by this court at the former hearing of this case (*Bryan v. Curtis*, 26 App. D. C., 95: 33 Wash. Law Rep., 520), in which the cause was remanded for the express purpose of having the administratrix made a party defendant and of giving her an opportunity to raise the question here being considered. In the opinion in that case, the court said: "While the administratrix

has the full benefit of the dismissal of the bill, she is not in a situation to be concluded by the present determination of these questions. At the same time their determination would seriously affect her interests if adverse thereto. The situation is analogous to that where an appellate court finds that an indispensable person, whose interests are directly involved, has never been made a party to the proceedings. In such case, the rule is to reverse and remand the cause in order that the defect may be cured." The proposition that a person in whose favor a judgment has been rendered is not a proper party defendant in a suit brought to deprive him of the proceeds of his judgment is one to which we can not subscribe.

It may be suggested that neither of the parties can lose any rights by the refusal of the courts of the District of Columbia to take jurisdiction of this controversy. The agency, through which the proceeds of the judgments are conveyed from the treasury to the court, will have no material bearing upon the final adjudication of the rights of the parties. Any question as to the title to the money derived from these judgments can be properly litigated and settled in the courts from which the parties derive their authority to be heard. No failure of justice can be anticipated that calls for judicial interference. Hence, any attempt on the part of the courts of the District of Columbia to decree the right to possession of the proceeds of these judgments, or even to direct to whom the judgments should be paid, would be an unwarranted interference with the tribunals of another government.

The suggestion made at bar that if the proceeds of these judgments should be paid over to the administratrix the money may be dissipated and no opportunity afforded the plaintiff to acquire possession of it in Texas, is without merit. This court will not assume that the court from which defendant derived her authority to bring suit and secure the judgments in question has failed to perform its duty. It is to be presumed that the court before granting letters of administration required an undertaking from the defendant sufficient to secure the safe return of any amount that might be realized from the judgments. It may be suggested that if plaintiff's fears in this respect are well founded, the Texas court is the proper place to apply for relief, and not here.

It is unnecessary to inquire into the other questions raised by the appeal.

Judgment affirmed with costs.

**Checks and Drafts.**—The drawee of a forged check, who has paid the same without detecting the forgery, is held, in *First Nat. Bank v. Bank of Wyndmere* (N. D.), 10 L. R. A. (N. S.), 49, to be entitled, upon discovery of the forgery, to recover the money paid from the party who received it, even though the latter was a good-faith holder, provided the latter has not been misled or prejudiced by the drawee's failure to detect the forgery.

The drawee of a forged draft is held, in *Ford v. People's Bank* (S. C.), 10 L. R. A. (N. S.), 63, to be entitled to recover back the amount paid upon it to one whose conduct has been such as to mislead him, or induce him to pay the draft without the usual security against fraud. With these cases is a note collating all the other authorities on the right of drawee of forged check or draft to recover money paid thereon.

## Supreme Court of the District of Columbia, HOLDING A DISTRICT COURT.

In the Matter of the Extension of Second Street Northwest from Elm Street North to Bryant Street, of W Street from its Present Terminus West of Flagler Place to Second Street, and of W Street West to Second Street Eastwardly to Second Street.

### STATUTORY CONSTRUCTION; LIMITATION OF TIME FOR EXERCISE OF RIGHT OF EMINENT DOMAIN.

1. Under the act of Congress of January 9, 1907, authorizing the Commissioners of this District, within thirty days after the passage of the act, to institute a proceeding to condemn lands for the extension of certain streets, the day of the passage of said act is to be counted as part of the thirty days within which the proceeding must have been commenced; and a petition filed on February 8, 1907, that being the thirty-first day after the passage of the act, was filed too late.
2. The said act, being one defining the time and the manner in which the power of eminent domain is to be exercised, must be strictly construed. The municipality can take nothing by implication, but there must be statutory authority for every step in the edgewise in.

No. 712 District Court. Decided December 12, 1907.

HEARING on a motion to strike out an amended petition. Motion granted.

Mr. A. H. BELL, Mr. C. ROBINSON, and Mr. P. E. SLEMAN for the motion.

Mr. E. H. THOMAS and Mr. J. FRANCIS SMITH opposed.

Mr. Justice BARNARD delivered the opinion of the Court:

In this matter an amended petition was filed, and a motion has been made on behalf of some of the owners of the land to be condemned to strike out the amended petition; and also the motion to strike out the original petition has been renewed.

Among the points most strenuously argued on behalf of the respondents, or land owners, is the fourth reason stated, namely, because the proceedings were not filed and instituted within the time authorized by the statute.

The proceeding is entered under a special act of Congress, passed January 9, 1907, and it says that "within thirty days after the passage of this act, the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to institute in the Supreme Court of the District of Columbia a proceeding in rem to condemn the land," etc.

The act having been approved on January 9th, if the thirty days limitation should commence on January 10th, and the petition be filed on the 8th of February, it would be within the period of thirty days.

If, however, the day of the passage of the act is to be counted, the 8th of February would be the thirty-first day, and therefore too late, within the terms of the statute; so that the question as to whether the petition was filed in time or not must be determined by the construction to be placed on the language "within thirty days after the passage of this act."

As a rule, the law recognizes no fractions of a day; and it is argued that as soon as the act was

approved on January 9, 1907, the Commissioners might on that day have filed the petition; and that therefore it was a lawful day to be counted as one of the thirty. For if the petition could have been filed that day, and the legislature had intended to give only thirty days in which to file the petition, and the court should hold that the 8th of February would be in time, then it would be plain that the Commissioners would have thirty-one days instead of thirty, in which to begin the proceeding.

If the act had said "thirty days after the day on which the act was approved," there would be no room for construction; but the thirty days was required to begin from the date of the passage of the act—that is to say, thirty days after the signing of approval by the President to the act.

The question then is, shall the day when the act was passed, January 9th, be counted?

The statute under which this proceeding is had being one defining the time and the manner in which the power of eminent domain is to be exercised, must be strictly construed—that is to say, that the municipality is to take nothing by implication, but there must be statutory authority for every step in the proceeding.

In the case of *Brown v. Macfarland*, 19th Appeals D. C., 530: 30 Wash. Law Rep., 235, Chief Justice Alvey says:

"The owners of lands proposed to be condemned are placed in the position of defendants or opponents of the proceeding of condemnation; and consequently, all affirmative acts prescribed by the statute in perfecting the proceeding, must be shown to have been complied with by the parties authorized to take and prosecute the proceeding. The whole proceeding is strictly statutory, and it must be affirmatively shown that all the provisions of the statutes that apply to the proceedings have been substantially complied with. Otherwise the whole proceeding would be void and without effect."

In the *Binney* case, 2d Bland, 129, the court says, in relation to a statute for condemnation of land, "An act of this sort deserves no favor. To construe it liberally would be sinning against the right of property." *Belcher Sugar Refining Company v. St. Louis Grain Elevator Company*, 82 Missouri, 121; *Vanhorne's Lessee v. Dorrance*, 2 Dall., 303.

Having in mind that statutes of this character are to be strictly construed, shall any more time be allowed than that expressly given by the statute in which to institute the proceeding?

There can be no question but what the act of Congress involved in this case was passed on the 9th day of January, 1907, and that it took effect on that day.

Therefore, if there was no reason or authority for making an exception to the general rule that fractions of a day were not counted (and there seems to be no such reason in this case), then the day on which the act was passed was a day on which the petition could have been filed; and if in addition to that day, thirty more days were to be allowed, the authorities seeking the condemnation would have more than thirty days in which they were authorized to file the petition; and that authority would have to be allowed to them by implication, rather than by an express provision.

Unless fractions of a day are to be considered, the day on which the act was passed must count

for a whole day; so that the last day on which the petition could have been properly filed would have been the 7th day of February, instead of the 8th.

February 7th was on Thursday, so that there could have been no reason why the petition could not have been filed on that day, as there might have been if it had occurred on Sunday.

I am aware that the Supreme Court of the United States has held that an appeal which is to be taken within two years after the entry of judgment, under section 1008, Revised Statutes of the United States, may be taken within two years after the day on which the entry is made. *Credit Company v. Arkansas Central Railway Company*, 128 U. S., 258; *Smith v. Gale*, 137 U. S., 577.

I have been cited, however, to the later case of *Taylor against Brown*, 147 U. S., 640, where the court holds that the day of the issue of the patent to an Indian should be counted as a whole day, in estimating the time wherein the Indian was prohibited from making sale of the land. In that case five years was fixed by the act for the protection of the Indian; and the day on which the patent was issued was held as the first day of that period.

The law with regard to counting fractions of a day will be found discussed in the case of *Louisville against the Bank*, 104 U. S., 469; and I see no reason why the rule as to fractions being counted should be applied to a case like the present.

In the case of *Arnold v. U. S.*, 9th Cranch, 105, the court held that where the computation is to be made from an act done, the day on which the act is done is to be included.

If the thirty days mentioned in this act is to be treated as a Statute of Limitations, then, by analogy, it begins to run on the day the act was passed, because the general limitation law provides that the accrual of a cause of action means the right to institute and maintain the suit, and whenever one person may sue another a cause of action has accrued, and the statute begins to run from that day.

Tested by his law this statute of limitations of thirty days certainly begins to run on the day the law was passed, to wit, January 9, 1907.

The legislative body, in conferring a right, may fix a limitation to the exercise of that right, so that where a statute gives a right of action or proceeding which did not exist at the common law, and at the same time, while giving the right, fixes the time within which the right may be enforced, the time so fixed becomes a limitation or condition on such right, and will control, no matter in what forum the action may be brought.

As stated in *Wood on Limitations*, section 9:

"In creating the right the legislature has the power to impose any restrictions it sees fit, and the conditions so imposed qualify the right, and are an integral part thereof; they are conditions precedent, so to speak, that must be complied with, or the right does not exist."

It will be conceded that until the passage of the act of January 9, 1907, the Commissioners had no power to institute this proceeding; so that the question of power must be considered as coming under the terms of the said act, and as being limited by the terms thereof.

If they have not commenced the proceeding within the time specified, they would have no



more right to commence it after that time than they would have had to commence it before the passage of the act.

I am, therefore, forced to the conclusion considering the rules of construction in such cases, that the right to begin the proceeding existed on the 9th day of January, 1907, immediately on the approval of the said act; and that, counting that day as one of the thirty days (which must be done, or more than thirty days be given in which the act could be performed), that the proceeding was instituted too late; and for that reason the power to institute it was lost under the terms of the act creating that power.

It follows, if the court is correct in this, that the proceeding will have to be dismissed.

This conclusion renders it unnecessary to decide the other questions presented in argument at this time.

CONRAD H. SYME, COMPLAINANT,

v.

JOHN H. POOLE ET AL., DEFENDANTS.

EQUITY; INJUNCTION; INJURY TO PUBLIC.

1. An injunction will not be granted at the suit of a private individual where the injury complained of, if such injury exists, is one which he shares with the public at large and not an injury special to himself.
2. Courts of equity deal only with civil or property rights, and have no facility for preventing "loss from a sentimental standpoint."
3. In a suit to enjoin the removal by defendants of certain trees in the Botanic Gardens alleged to have historic interest and value, to make room for the erection of the Grant memorial, under authority of the act of Congress of February 23, 1901, an injunction denied and the bill dismissed.

Equity No. 27,394. Decided December, 1907.

HEARING on a bill in equity for an injunction. Bill dismissed.

Mr. CONRAD H. SYME for the complainant.

Mr. STUART McNAMARA for the defendants.

Mr. Justice GOULD delivered the opinion of the Court:

In his amended bill, plaintiff, representing "that he is a citizen of the United States, and a resident of the District of Columbia, and a taxpayer of the United States, and a taxable inhabitant of the United States, and brings this suit in his own right as such citizen and taxpayer," seeks to enjoin the Grant Memorial Commission, consisting of Gen. Granville M. Dodge, Senator George P. Wetmore, and the Hon. William H. Taft, from destroying certain trees which he alleges have a historic interest and value, situated in the Botanic Gardens, to make room for the erection of a memorial to the late Gen. Ulysses S. Grant, under authority of an act of Congress of February 23, 1901. Lieut. John H. Poole, of the Corps of Engineers, U. S. A., was also made a defendant as the executive officer of said commission. Subsequently Col. Charles S. Bromwell, U. S. A., and the executive and disbursing officer of said commission, was substituted for said Poole as the defendant. Upon filing the bill a rule was issued to show cause why the commission should not be temporarily restrained. To this rule return was made by Lieutenant Poole and subse-

quently by Colonel Bromwell, who adopted the return already made by Poole.

Numerous questions were discussed in the oral argument which, in the view I take of the case, need not be decided. At the threshold, the plaintiff is not with the objection that he has no right to the relief sought because the injury complained of, if such injury exists, is one which he shares with the public at large and not an injury which is special to himself. To my mind this objection is insuperable. The rule is thus stated in 22 Cyc., p. 760, par. 3: "Where the injury complained of is really a public injury, and the right violated is a public right, the general rule is that an individual can not maintain a suit for an injunction unless he suffers a special injury different from that suffered by the public at large." An instructive case in which this rule has been applied, and a case which presents many points of similarity to the one under consideration, is that of *State of Oregon ex rel. Taylor v. Lord et al.*, 28 Oregon, 498, 31 L. R. A., 473, where it was sought to enjoin a State Board of Commissioners of Public Buildings from carrying into effect certain acts of the legislature providing for the construction of an asylum and appropriating money therefor, because of the alleged unconstitutionality of a part of the act. This case refers to a prior case against the same board, reported in 26 Oregon, 205, in which speaking of the right of a private individual to resort to a court of equity for injunction to restrain the acts of officials, this language is used: "The taxpayer must, however, present such a case as will bring him within the ordinary equitable rules which govern when relief by injunction is sought. He must show that some act is threatened or imminent which will result in some material injury to himself, for which there is no adequate remedy at law. It is not sufficient that he apprehends injurious consequences, which neither actually exist nor are threatened. Fanciful, speculative, or even possible evil results are too remote and indefinite upon which to call into requisition the restraining process of a court of equity. . . . The complainant who seeks an injunction must be able to specify some particular act, the performance of which will damnify him, and it is such act alone that he can restrain." In the case first cited the court used the following language: "When this case was here before we held that a private individual could not have public officers enjoined from using public funds unless it could be shown that some civil or property rights were being invaded, or, in other words, that the individual was going to get hurt by the transaction. Upon that principle it was decided that he should be required to show that the location and building of the branch asylum in Eastern Oregon would be attended with greater cost and expense than if constructed at the Capital, thereby increasing the burden of taxation which would be imposed upon him, with others, whose duty it is to contribute to the support of the Government." It was also held that the location of a site for a public institution, the purchase of a tract of land therefor, the employment of an architect to draw plans, etc., for the building, and the letting of contracts therefor by a commission were matters governmental in their nature with which the courts could not interfere by injunction.

In the case of *Barrows v. City of Sycamore*, 150 Ill., 588; 25 L. R. A., 535, which was an action



for damages for injury caused by an obstructed street, the court uses this language: "In all cases, to warrant a recovery, it must appear there has been some direct physical disturbance of a right, either public or private, which the plaintiff enjoys in connection with his property, and which gives to it an additional value, and that, by reason of such disturbance, he has sustained a special damage with respect to his property in excess of that sustained by the public generally. In the absence of any statutory or constitutional provisions on the subject, the common law afforded redress in all such cases, and we have no doubt it was the intention of the framers of the present constitution to require compensation to be made in all cases where, but for some legislative enactment, an action would lie by the common law. When the action is by an individual, the special injury is the gist of the action and, unless it is alleged and proved, there can be no recovery."

In the case of the Cicero Lumber Company v. Cicero, 176 Ill., 9; 42 L. R. A., 696, the court uses this language: "The general rule is that, when the duty about to be violated by the corporation or its officers is public in its nature, and affects all the inhabitants alike, one not suffering any special injury can not, in his own name, or by uniting with others, maintain a bill for injunction. A private individual can not maintain a bill to enjoin a breach of public trust without showing that he will be specially injured thereby. Where no injury results to the individual, the public only can complain. Hence, in the declaration or bill the party complaining must allege and prove some special damage, different in kind and degree from that suffered by the general public."

The same rule has been applied in numerous cases where it has been sought to restrain the violation of city ordinances; it is universally held that the complainant must show not only the violation of the ordinance, but special damage to himself or his property, and where he fails to do this no equitable relief will be granted.

In the case of Green v. Mills, 69 Fed. Rep., 852, 30 L. R. A., 90, Chief Justice Fuller, sitting in the United States Court of Appeals, Fourth Circuit, used this language: "It is well settled that a court of chancery is conversant only with matters of property and the maintenance of civil rights. The court has no jurisdiction in matters of a political nature, nor to interfere with the duties of any department of government unless under special circumstances and when necessary to the protection of rights of property, nor in matters merely criminal, or merely immoral, which do not affect any right of property."

Tested by these principles, this bill of complaint can not be maintained. It contains no allegation that plaintiff pays any taxes to the United States, or that if he did such taxes would be increased by the proposed action of the memorial commission. It sets up no property interest whatever in plaintiff that will be affected by such action. It does state that the destruction of the trees in question will entail a loss upon the citizens of the United States "both from a sentimental and financial standpoint, and upon your complainant as a taxpayer and a taxable inhabitant of the United States. "Courts of equity, as stated by Chief Justice Fuller, supra, deal only with civil and property rights, and have no facility for preventing

"loss from a sentimental standpoint," whatever that may be. From the allegations in the bill it is clear that whatever loss may be suffered by plaintiff from a financial standpoint differs in no respect from that which will be suffered by every other taxable inhabitant of the United States. Nor does the bill afford the court any opportunity for concluding that, from a financial standpoint, the action of the commission will result in any loss. Assuming that plaintiff is a taxpayer, it is impossible to conclude from the face of this record that his financial obligations will be increased by the location of the memorial to General Grant in the Botanic Garden rather than in some other locality.

For these reasons the bill will be dismissed.

FREDERICK S. SINCLAIR ET AL.

v.

JOHN S. SINCLAIR ET AL.

WILLS; RULE IN SHELLEY'S CASE.

A testator, by his will, which took effect in 1879, gave certain real estate, after the death of his wife, to a daughter during her lifetime, "and to the heirs of her body share and share alike or their assigns in fee simple forever." Held, that the words "heirs of her body" were words of limitation, the legal import of which was not controlled by the added words "share and share alike;" that the rule in Shelley's Case applied, and the daughter took an estate in fee simple.

Equity No. 25,955. Decided December, 1907.

HEARING on a bill in equity for partition by sale. Bill dismissed.

Mr Justice GOULD delivered the opinion of the Court:

This is a suit for partition by sale of the premises No. 1920 L street N. W., and involves the application of the rule in Shelley's Case. One John P. Jidt was the owner of the property, died in 1879, and disposed of the same by the third paragraph of his will, which reads as follows: "Upon the decease of my wife Nellie, aforesaid, I give and bequeath to my daughter Mary Jane Sinclair, during her lifetime, the house and ground now rented, being house numbered 1920 L street N. W., in this city, and to the heirs of her body, share and share alike, or their assigns, in fee simple, forever."

Nellie Jidt died February 3, 1884; Mary Jane Sinclair died December 19, 1895, leaving as her heirs at law her brothers and sisters and their descendants, three of whom are the defendants, John Sinclair, Ella H. Sinclair, and Bessie F. Merrill, and two of whom are the complainants, Frederick S. Sinclair and Marie Elizabeth Sinclair, who are the two children of George R. Sinclair, a brother of Mary Jane, who died on May 27, 1895. Mary Jane Sinclair died testate and by her will, which has been duly probated, devised the property hereinbefore described, to the defendants, one-fourth, however, to the defendant, Ella H. Sinclair, in trust for the benefit of the complainants during their lives and after their deaths to be divided among the defendants.

It will thus be seen that if Mary Jane Sinclair took an estate in fee simple under the will of Jidt, the plaintiffs are not entitled to maintain their

bill; and whether she did or not depends upon the application of the rule in Shelley's Case.

It is contended on behalf of complainants that the words "heirs of the body" should, for the purpose of effecting the intention of the testator, be taken as meaning "children" and that when so taken the rule does not apply, and I have been referred to two cases which it is claimed support this proposition, namely, *Devaughn v. Hutchinson*, 165 U. S., 577, and *Grainger v. Grainger*, 147 Ind., 113. But an examination of these cases discloses that in each of them there were superadded words varying the sense and operation of the term "heirs" or "heirs of the body." Thus in *Devaughn v. Hutchinson*, the devise was to a daughter for life, and at her decease to her heirs begotten of her body and to their heirs and assigns, and the court held that this distributive language showed an intention on the part of the testator that the children of the daughter should become the root of a new succession and take as purchasers, and not as heirs. In *Grainger v. Grainger*, the devise was "to have and to hold the same during the full term of his natural life, and, after his death I devise and bequeath the same to the heirs of his body by him begotten, if there be any such heirs, him surviving; and, should he have no heirs of his body, by him begotten, him surviving," then a devise in fee to other parties, and the court held that the qualifying words following "heirs of his body," to wit, "by him begotten, if there be any such heirs him surviving" limited the description to children and thus stopped the application of the rule.

I am unable to find in this will any such limitation or restriction upon the words "heirs of the body" as to bring the case within these decisions. The rule in Shelley's Case is said to be a rule of property which raises a conclusive presumption that where a devise is made to a man and his heirs, the testator intends to use the word heirs as a word of limitation and not of purchase. In the language of *Preston on Estates*, "neither the express declaration, first, that the ancestor shall have an estate for his life and no longer; nor, secondly, that he shall have only an estate for life in the premises, and after his decease it shall go to the heirs of his body, and, in default of such heirs, vest in the person next in remainder, and that the ancestor shall have no power to defeat the intention of the testator, will change the word 'heirs' into a word of purchase." This case seems to me to come within the decision of *Sims v. Georgetown College*: 1 App. D. C., 72: 21 Wash. Law Rep., 595, where the devise was to the daughter for life, "and after her death, the same to go to her heirs, share and share alike." In that case the chief justice quotes largely from *Jarman on Wills* as to the effect of coupling a limitation to heirs of the body with words of modification importing that they are to be taken concurrently or distributively as by the addition of the words "share and share alike." Mr. Jarman says: "The courts have, therefore, wisely rejected the construction which reads heirs of the body with such a context as meaning children, and thereby restricts the testator's bounty to a narrower range of objects."

It was argued by counsel for the complainants that the intention of the testator should be sought in construing this devise and that such intention was to give Mary Jane Sinclair but a life estate.

I think this argument is met by the language of the Supreme Court of the United States in the case of *Daniel v. Whartenby*, 17 Wall., 642, in which it holds that the rule in Shelley's Case is one of law and not of construction, and "in construing wills where the question of its application arises, the intention of the testator must be fully carried out so far as it can be done consistently with the rules of law, but no further. The meaning of this is that if the testator has used technical language, which brings the case within the rule, a declaration, however positive, that the rule shall not apply, or that the estate of the testator shall not continue beyond the primary express limitation, or that his heirs shall take by purchase and not by descent, will be unavailing to exclude the rule and can not affect the result."

I therefore conclude that in this case the testator made use of words, to wit, heirs of the body, having a well-known technical meaning as words of limitation; that under the decision of the Court of Appeals in *Sims v. Georgetown College*, the added words "share and share alike" do not control the legal import of such words of limitation, and that therefore the rule in Shelley's Case applies and plaintiff's bill must be dismissed.

### Supreme Court of the United States.

SARAH CHUNN, PLAINTIFF IN ERROR,

v.

CITY AND SUBURBAN RAILWAY OF WASHINGTON.

APPEAL; REVIEW OF DISCRETIONARY ORDER; STREET RAILWAYS; NEGLIGENCE; CONTRIBUTORY NEGLIGENCE OF INTENDING PASSENGER; PROXIMATE CAUSE.

1. An exception to the refusal of the trial court to reconsider its order, made on defendant's motion, permitting the withdrawal of a plea in abatement and the filing of a plea in bar, and to allow the trial of the issue joined on the plea in abatement, is not available in the Federal Supreme Court.
2. Whether it is negligence to run a street-car at full speed past a usual stopping place when persons can plainly be seen standing upon the platform between the inner rails, awaiting a car approaching from the opposite direction, is a question for the jury, where the street-car company had sanctioned such a practice on the part of intending passengers, and the space between the rails, while wide enough to enable a person standing in the center to escape injury, left but a narrow margin of safety.
3. A person is not, as a matter of law, guilty of such contributory negligence in following the customary practice sanctioned by a street-car company of standing upon the platform between the two inner rails at a usual stopping place, awaiting an approaching car, as precludes a recovery for injuries sustained from being struck by a car which ran by this stopping place on the other track at full speed, where the space between the rails, though leaving but a narrow margin of safety, was wide enough to permit a person standing directly in the center to escape injury.
4. The negligence of one who carelessly places herself in a position exposed to danger can not, as matter of law, be said to be the proximate cause of an injury, if her negligence was discovered in time to avoid the injury by the use of reasonable care, and such care was not exercised.

No. 43. Decided December 2, 1907.

IN ERROR to the Court of Appeals of the District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District, directing a verdict for defendant in an action to

recover damages for a personal injury. Reversed and remanded, with directions to reverse the judgment of the trial court and remand the cause to that court with a direction to set aside the verdict and award a new trial.

The facts are stated in the opinion.

Mr. PERCY METZGER and Mr. VICTOR H. WALLACE for plaintiff in error.

Mr. GEORGE P. HOOVER and Mr. CHARLES A. DOUGLAS for defendant in error.

Mr. Justice MOODY delivered the opinion of the Court:

This is a writ of error to the Court of Appeals of the District of Columbia. The plaintiff in error brought an action to recover damages for personal injuries which she alleged were suffered by her through the negligence of the defendant in error, a corporation operating an electric street railway. The defendant pleaded in abatement that the plaintiff was, at the time of bringing action, an infant under the age of 21 years. Issue was joined on the plea. Thereafter the defendant, on motion and payment of the costs, was permitted to withdraw this plea and file a plea in bar. When the case came for trial at a later term the plaintiff tendered back the costs and moved the court to reconsider its order that the plea in abatement might be withdrawn and the plea in bar filed, and that the trial proceed upon the issue joined on the plea in abatement. To the refusal to grant these motions the plaintiff excepted. This exception requires no further consideration than that given to it in the court below, and is overruled.

The plaintiff then introduced testimony in support of her declaration, and at the close of this testimony the judge presiding at the trial directed a verdict for the defendant. The plaintiff excepted to the order of the court and her exception was overruled by the Court of Appeals, and is now here for our consideration. The question is whether there was evidence which, with the inferences reasonably to be drawn from it, tended to prove all the essential elements of the plaintiff's cause of action.

Without reciting all the testimony which is set forth in full in the opinion of the Court of Appeals the facts disclosed by it may be stated in narrative form. The plaintiff, a young woman, had lived and worked in Riverdale, Md., for about a year before the accident. During that time she had frequently traveled to Washington on the defendant's cars. It was the custom of persons who traveled from Riverdale to Washington on the defendant's railway to board the cars from what was called the platform near the station of the Baltimore and Ohio Railroad. At that point there are two tracks of the defendant, running north and south. The distance between the inner rails of the two tracks was 7 feet, 10 inches. The steps of the cars projected 2 feet 2 inches beyond the tracks, leaving, when two cars passed each other at this point, a clear space between them of 3 feet 6 inches, so that, as one of the plaintiff's witnesses said, "there was ample room to stand if you were thinking what you were doing." The platform extended 30 feet lengthwise along the tracks. It consisted of boards laid on the ground and sleepers and parallel with the tracks. It covered the space between the tracks

and the rails of the tracks and the width of two boards beyond the outside tracks. A road ran west of and near the tracks. West of the tracks there was "a kind of sink," and those boarding the cars for Washington from that side had "to stand out in the mud or in that hole to get on the car." The cars to Washington ran on the west and the cars from Washington ran on the east track. It was the custom of persons taking the Washington car to board it from the east side, standing on the platform between the tracks, and the doors of the cars were opened to receive them from that side. Sometimes, however, such passengers entered from the west side. The purpose for which the platform was originally constructed was not shown, but it was used in the manner stated and for the passage of persons and vehicles. One standing on the platform at this point could see or be seen for a distance of at least a quarter of a mile north or south. On the evening of September 29, 1900, the plaintiff came to this place to take the car for Washington. The hour was not stated, but it was light enough to recognize a person a hundred yards away. The plaintiff testified that she remembered nothing from the time she left her house until she recovered consciousness in the hospital; but from other testimony it appears that as the car for Washington approached from the north she went to the platform and stood between the tracks. There were other persons intending to take the car, one of whom stood near her and also between the tracks. As the car for Washington came from the north another of defendant's cars came from the south. The Washington car slowed down and came to a stop just as the latter car, without stopping, ran by "at a rapid rate of speed," as one witness said, or "12 to 15 miles an hour," as another witness said. No one saw exactly what happened to the plaintiff, who was standing near the north end of the platform, but the sound of "a shock" was heard, and the plaintiff was found unconscious between the tracks, 10 or 15 feet north of the north end of the platform. It may be inferred that she was struck by the rapidly passing car bound north, which did not come to a stop, as one witness said, for one or two hundred feet beyond the platform.

If, upon these facts, reasonable men might fairly reach the conclusion that the plaintiff, while herself in the exercise of due care, was injured by the negligence of the defendant, the case should have been submitted to the jury. *Warner v. Baltimore & O. R. Co.*, 168 U. S., 339, 42 L. ed., 491, 18 Sup. Ct. Rep., 68. That the plaintiff was injured by being hit by the car running north does not admit of doubt. We need not delay at that point, but may proceed at once to the other aspects of the case. The plaintiff had come to a place where passengers had habitually boarded the defendant's cars. The defendant had encouraged and invited persons to enter its cars going south from the space between the tracks by opening the doors and receiving them from that side. It was a place which, in itself, was perfectly safe, unless made otherwise by the manner in which the defendant used the east track for the passage of cars. The plaintiff, therefore, was not a trespasser nor a mere traveler upon the highway. It is not important to determine whether she had become a passenger. Intending to become a passenger, she had come to a place recognized by the

practice of the defendant as a convenient and suitable one from which to enter the car, and the car stopped to receive her. The defendant owed her an affirmative duty. It was bound to use that care for her protection which was reasonably required in view of the situation in which she had, at the defendant's invitation, placed herself, of the purpose for which she was there, of the approach of the car which she was intending to enter, and of the dangers to be apprehended from contact with a rapidly moving car, propelled by mechanical power. A jury might well say that, under such circumstances, reasonable care demanded the exercise of the utmost vigilance, foresight, and precaution. The motorman of the northbound car could see plainly that the car for Washington was about to stop, and that passengers were standing upon the space between the tracks, intending to enter it. He might readily have understood that the noise of the transit of the two cars would be commingled, and that those who intended to enter the other car would naturally direct their attention to it, and might fail to notice the approach of his own car. In point of fact, the motorman took no precaution whatever; he assumed that those who were standing on the platform would take care of themselves, and ran his car by them at full speed as if oblivious of their existence. We think, as the Court of Appeals held, that from the evidence the jury might have found that the defendant was negligent. The question whether the plaintiff herself was guilty of contributory negligence presents somewhat greater difficulty. There was room to stand between the two cars and escape contact with either. But the margin of safety was narrow and left little allowance for the infirmities of mankind. In the confusion of two cars approaching from opposite directions it is too much to expect nice calculations of distances. It is not to be wondered at that in the attempt to escape the one the plaintiff fell foul of the other. The same witness (himself standing on the platform between the tracks) who said that "there was ample room to stand if you were thinking about what you were doing" also said: "I realized that I would have to hold myself strictly in the center of the two tracks." We think that the plaintiff, if she was rightly where she was, was not, as a matter of law, guilty of negligence in failing to appreciate accurately the boundaries of the narrow zone of safety which the defendant's conduct had left to her. The 3 feet, 6 inches width of the clear platform can not fairly be considered without taking into account the dangers which infested the borders upon each side. A platform which would be wide enough for a child to walk in safety from the base of the Washington monument to the steps of the Capitol, if elevated to extend from the summit of one to the dome of the other, would imperil the passage of the man of steadiest nerve. Nor was the plaintiff necessarily wanting in due care by taking her place between the tracks. It was the usual place from which entrance to the Washington car was made. It was safe enough under ordinary circumstances. It was made unsafe only by reason of the defendant's negligent act in running another car rapidly by. The plaintiff had the right to assume that the defendant would not commit such an act of negligence, and that, when it stopped one car and thereby invited her to enter it, it would not run

another rapidly by the place of her entrance and put her in peril. We think that it can not be said, as a matter of law, that the plaintiff was guilty of contributory negligence. That issue, with the others in the case, should have been submitted to the jury with appropriate instructions. Nor is it clear that, even if the plaintiff was not free from fault, her negligence was the proximate cause of the injury. If she carelessly placed herself in a position exposed to danger, and it was discovered by the defendant in time to have avoided the injury by the use of reasonable care on its part, and the defendant failed to use such care, that failure might be found to be the sole cause of the resulting injury. *Inland & Seaboard Coasting Co. v. Tolson*, 139 U. S., 551, 35 L. ed., 270, 11 Sup. Ct. Rep., 653; *Grand Trunk R. Co. v. Ives*, 144 U. S., 408, 429, 36 L. ed., 485, 493, 12 Sup. Ct. Rep., 679; *Washington & G. R. Co. v. Harmon* (Washington & G. R. Co. v. Tobriner), 147 U. S., 571, 583, 37 L. ed., 284, 289, 13 Sup. Ct. Rep., 557; *Tuff v. Warman*, 5 C. B. N. S., 573; *Radley v. London & N. W. R. Co.* L. A. 1 App. Cas., 754; *Thomp. Neg.*, 2d ed., secs. 238, 239; *Pollock, Torts*, 6th ed., pp. 441 to 447, inclusive. The judgment is reversed and the case remanded to the Court of Appeals, with directions to reverse the judgment of the Supreme Court of the District of Columbia, and remand the cause to that court with a direction to set aside the verdict and award a new trial.

#### Banks.

A bank which, after indorsing a note to its president for collection and receiving from him a reindorsement to its own order, transfers the note for value to another without striking out its indorsement, is held, in *Moore v. First Nat. Bank (Colo.)*, 10 L. R. A. (N. S.), 260, to be estopped to deny its liability to its transferee as indorser in blank.

A signer of a joint and several promissory note, although known by the payee to be a surety, is held, in *Vanderford v. Farmers' & M. Nat. Bank (Md.)*, 10 L. R. A. (N. S.), 129, not to be discharged, under the negotiable instruments law, by the granting of an extension of time to the principal debtor.

A maker of a note, who appends to his name the word "surety," and is, as between himself and his comaker, a surety only, to the knowledge of the payee, is held, in *Cellers v. Lyons (Or.)*, 10 L. R. A. (N. S.), 133, to be primarily liable, and not to be discharged, under the negotiable instruments law, by an extension of time to the principal obligor.

The mere fact that the name of a partnership is placed on a note as maker after that of a corporation, is held, in *Union Nat. Bank v. Neill (C. C. A., 5th C.)*, 10 L. R. A. (N. S.), 426, not to raise the presumption that it was surety only, so as to show on the face of the instrument an unauthorized use of the partnership name, and render the note invalid in favor of partners without notice, in the hands of one who took it for value before maturity from one having apparent title to it.

Justice blanks of every description for sale at this office.

**Principal and Surety—Rights of Sureties Inter Se—Assignment by Principal to Surety.**

In *Labbe v. Bernard*, decided by the Supreme Judicial Court of Massachusetts, Bristol (November, 1907, 82 N. E. 688), it was held that where one of the sureties on the bond of a building contractor, on the abandonment of the work by the contractor, completed the work and received the balance of the contract price, he can not require contribution by the sureties to the expense of the work, without giving credit for the amount received by him for doing the work, though the contractor, after beginning the work and before abandoning it, borrowed money of such surety to enable him to carry on the work, and as security therefor assigned to him all claims and demands under the building contract; such surety taking the assignment with notice of the equitable rights of his cosureties, which related back to the time of the contract of suretyship."

**Guest's Right to Room in Hotel.**

[Case and Comment, December, 1907.]

It is surprising that, after some centuries of development of the law in respect to the relations of guests and innkeepers, there is an almost entire absence of precedents as to what are the rights of a guest in a hotel to a continuance of his occupation of a room when the landlord chooses to transfer him to a different room. In the late case of *Hervey v. Hart*, Ala., 9 L. R. A. (N. S.), 213, 42 So., 1013, a guest at a hotel in Mobile during Mardi Gras festivities found, on attempting to return to his room after he had been temporarily absent from it, that he was excluded from its further occupation. He brought an action, alleging that while temporarily absent from his room the landlord had caused his baggage to be removed from it, and that he refused to furnish him any other proper accommodations, although it was then late in the night, and the city was crowded with people, so that he could not get accommodations in the city, and that he was compelled to wander about the city for the greater portion of the night seeking a place to sleep. He offered evidence of these facts, but the evidence of the defendant was somewhat in conflict with it. The jury found against the plaintiff, but a motion for a new trial was granted, and it was affirmed on appeal. The Supreme Court declared the law on the subject to be that the innkeeper has the right, and the sole right, to select the apartments for a guest, and, if he finds it expedient, to change the apartment and assign the guest to another, without becoming a trespasser in making the change; that if he offers proper accommodations in lieu of the room which is taken away from the guest he is not liable; but if, having the necessary convenience, he refuses to afford reasonable accommodation he is liable to an action for damages. The court relied upon the Canadian case of *Doyle v. Walker* (26 U. C. Q. B., 502), which lays down the same doctrine. These seem to be the only decisions that are directly in point, and both deny that a guest to whom a room is assigned acquires any right to occupy it beyond the discretion of the landlord, provided only that the landlord gives him other proper accommodations.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.**

**FIRST INSERTION.**

**F. H. Stephens, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ferdinand Schroeder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,822. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Watson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,821. Administration. [Seal.] 2-3t

**Chapin Brown and Wm. A. McKenney, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. Whittemore, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of January, 1908. CHAPIN BROWN, 323 John Marshall Place; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,946. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Nelson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,826. Administration. [Seal.] 2-3t

**Legal Notices.****F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,824. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Cairns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,823. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John J. Mountney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,825. Administration. [Seal.] 2-3t

**Carlisle & Johnson, Solicitors****In the Supreme Court of the District of Columbia.****David Paul Burleigh Conkling, Complainant, v. New York Life Insurance and Trust Company et al., Defendants. No. 27,483. In Equity.**

The object of this suit is to secure a conveyance in fee simple to the complainant, David Paul Burleigh Conkling, of the real estate situated in the city of Washington, District of Columbia, known and designated in the records of the surveyor's office of the District of Columbia, in liber 27 at folio 175, as lot numbered one hundred and thirty-nine (139) in Sarah B. Conkling's subdivision of lots numbered sixty-two (62) and sixty-three (63) of A. P. Fardon's subdivision of lots in square numbered one hundred and thirty-four (134) which the complainant in his bill claims that Sarah B. Conkling agreed to convey to him and the consideration for which conveyance the complainant claims to have paid to said Sarah B. Conkling in her lifetime. On motion of the complainant, it is this 10th day of January, A. D. 1908, ordered that the defendants, Della Mason Caldwell, Sarah B. C. Moller, Natalie Alberta Caldwell, James Caldwell, Natalie Burleigh von Ohnesorge, Paulina Feodora von Ohnesorge, Lebrecht Leopold von Ohnesorge, and Nathaniel Conkling, and every of them, do cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

[Seal]

Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

**Legal Notices.****John B. Dalsh, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Hellman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. MAE HELLMAN, 210 K st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,914. Administration. [Seal.] 2-3t

**J. J. Darlington, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Holtsman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of January, 1908. WILLOUGHBY S. CHESLEY, Bond Building, Wash., D. C.; CHARLES W. HENDLEY, 801-2 Continental Bldg., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,891. Administration. [Seal.] 2-3t

**Jas. L. Neill, Solicitor****In the Supreme Court of the District of Columbia.****Raquel Cruz Carter v. Heyward S. Carter.****No. 27,531. Equity Docket No.—**

The object of this suit is to obtain absolute divorce on ground of adultery. On motion of the complainant, it is this 8th day of January, 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Law Reporter and Washington

[Seal] Bee once a week for three successive weeks.

By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert B. Donaldson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of January, 1908. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,902. Administration. [Seal.] 2-3t

**Thomas Walker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel Jordan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of January, 1908. JOHN W. BRANSON, 832 3d st. S. W.; ALEXANDER S. HOWARD, 624 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,689. Administration. [Seal.] 2-3t



**Legal Notices.****G. P. Montague, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.****Estate of Bogislav Zglinitzki, Deceased.****No. 14,886. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Wanda A. Buell, the executrix named in said will, it is ordered, this 2d day of January, A. D. 1908, that—Zglinitzki (address unknown) and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Friday, the 14th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.**  
Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 2-3t

**J. A. Maedel, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Peter Schweitzer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **THEODORE PLITT, 523 Q. st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,800. Administration. [Seal.] 2-3t

**A. E. Shoemaker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lydia G. Conkling, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **LYDIA G. LEWIS, 2026 Kalorama Road.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,757. Administration. [Seal.] 2-3t

**W. Gwynn Gardiner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Joseph D. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **ERNEST P. JONES, 235 Pa. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,933. Administration. [Seal.] 2-3t

**Carlisle & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie H. Wise, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **WM. C. WISE, 1014 17th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,915. Administration. [Seal.] 2-3t

**Legal Notices.****Clarence R. Wilson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maud T. Porter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1908. **MARIE E. ROELKER, 1434 Q. st. N. W., Wash., D. C.; CARL J. ROELKER, State Bank Bldg., Richmond, Va.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,579. Administration. [Seal.] 2-3t

**Robinson White, Solicitor****In the Supreme Court of the District of Columbia,  
Holding a Special Term Thereof in Equity.****Clara S. Gross, Complainant, v. Henry J. Gross et al.,  
Defendants. Equity, No. 27,430.**

The object of this suit is to obtain a divorce from the bond of marriage with the defendant on the ground of adultery. On motion of the complainant it is, this 2d day of January, A. D. 1908, ordered that the co-respondent, May Howard, cause her appearance to be entered therein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and Washington Times before said date. **ASHLEY**

[Seal] **M. GOULD, Justice.** A true copy. Test: **J. R. Young, Clerk, by Wms. F. Lemon,** 2-3t  
Asst. Clerk.

**E. H. Thomas and A. B. Duvall, Attorneys****In the Supreme Court of the District of Columbia,  
Holding a District Court.****In re Opening of an Alley in Square 2844, in the  
District of Columbia. District Court No. 755.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1908 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square 2844 (formerly known as Block 21, Columbia Heights), in the District of Columbia, as shown on a plat or map filed with said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of said alley, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 7th day of January, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 31st day of January, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 31st day of January, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States Marshal or his deputies upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, before the said 31st

[Seal] day of January, A. D. 1908. By the Court: **JOB BARNARD, Justice.** A true copy. Test: **J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 2-1t

Justice blanks of every description for sale at this office.

**Legal Notices.****SECOND INSERTION.****C. Clinton James, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Thomas Cissel, Deceased.  
No. 14,868. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Louise Cissel, it is ordered this 3d day of January, A. D. 1908, that Mary Cissel, William Cissel, Ethel Cissel, Paul Cissel, and Sheridan Cissel, infants, and all others concerned, appear in said court on Monday, the 3d day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

**J. J. Waters, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Alfred Pope, Deceased.  
No. 14,862. Administration Docket, 37.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Hannah Pope. It is ordered this 3d day of January, A. D. 1908, that Alfred Hubert Thompson, and all others concerned, appear in said court on Friday, the 7th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

**M. J. Keane, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Benjamin Smith, Deceased.  
No. 14,911. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Langley. It is ordered this 2d day of January, A. D. 1908, that the unknown heirs at law and next of kin of Benjamin Smith, and all others concerned appear in said court on Tuesday, the 4th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Henry C. Burch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. **UNION TRUST COMPANY,** by George E. Fleming, Secretary; by George E. Fleming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,968. Administration. [Seal.] 1-3t

**Legal Notices.****Gus A. Schultdt, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Loense, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of December, 1907. **GUS A. SCHULTDT,** Columbian Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,927. Administration. [Seal.] 1-3t

**C. H. Stanley and H. S. Matthews, Solicitors****In the Supreme Court of the District of Columbia.****Roger B. Berry, Complainant, v. Mary L. Berry et al.,  
Defendants. No. 27,142. In Equity. Docket No.**

Charles H. Stanley and Henry S. Matthews, trustees herein, having reported the sale of part of subdivision lot 21 in square 367 in the city of Washington, District of Columbia, being the north 87.100 feet thereof, and part of subdivision lot 22 in said square, being the south 12 and 31.100 feet thereof, being improved by dwelling known as No. 1815 10th street northwest, to Ella Simonds for the sum of \$2,000.00 cash, and all of subdivision lot numbered 4 in square 447 in said city and District, improved by dwelling known as No. 607 N street northwest, to Solomon Berliner for the sum of \$1,501.00 cash, it is by the court, this 2d day of January, A. D. 1908, ordered that said trustees be, and they are hereby authorized to accept said offers, and upon compliance with the terms of said sales, said sales shall stand confirmed, unless cause to the contrary be shown on or before the 3d day of February, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star once a week for three successive weeks before the last mentioned day. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 1-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Elizabeth Strobel, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. **UNION TRUST COMPANY,** by George E. Fleming, Secretary; by George E. Fleming, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,101. Admn. [Seal.] 1-3t

**THIRD INSERTION****James F. Mullaly, Attorney****Supreme Court of the District of Columbia,****Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Moses Howland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of December, 1907. **CATHARINE ELLARD,** 1745 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,797. Admn. [Seal.] 52-3t



**Legal Notices.****Hargrove & Morris, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Massachusetts, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Anna Marie Colman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof, legally authenticated, to the subscribers, on or before the 19th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of December, 1907. CARROLL D. WRIGHT, Worcester, Mass.; JOHN BRUCE MCPHERSON, 11 Arlington st., Cambridge, Mass. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,769. Administration. [Seal.] 52-81

**Tracy L. Jeffords, Solicitor**

In the Supreme Court of the District of Columbia.  
Francis M. Cox, Complainant v. John W. Babson and Others. No. 27,014. Equity Doc. 60.

The object of this suit is to secure delivery to complainant of his five hundred dollar promissory note to defendant Babson, and to enjoin sale under deed of trust securing same, and to indemnify complainant for an incumbrance of \$2,000 on property purchased. On motion of the complainant, it is this 23d day of December, 1907, ordered that the defendant, Thomas R. Martin, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 52-81

**Coldren & Fenning, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Adolph Wolschendorf.  
Administration, No. 14,895.

Application having been made herein for letters of administration on the estate of said deceased, by Joseph Gawler, it is ordered this 20th day of December, 1907, that the unknown heirs at law and next of kin, and all others concerned, appear in said court on Thursday, the 30th day of January, 1908, to show cause, if any they have, why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-81

**E. H. Jackson, Attorney**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Frederick Stutz, Deceased.  
No. 14,182. Adm. Doc.

It appearing to the court service of the substance of the issues ordered to be tried in the above entitled cause has been returned "not to be found" as to Margaret Diederick, it is, this 23d day of December, 1907, ordered, that the substance of the said issues, and the date for the trial thereof, which is hereby set for the 27th day of January, A. D. 1908, shall be published in The Washington Herald newspaper and The Washington Law Reporter, once a week for a period of not less than four weeks from the date hereof. Was the paper writing propounded as the last will and testament of Frederick Stutz, dated April 9, 1903, and the paper writing propounded as the first codicil thereto, dated January 4, 1905, and the paper writing propounded as the second codicil thereto, dated December 20, 1905, executed by said Frederick Stutz in due form of law? Was the said Frederick Stutz at the time of the making of either said will, or either of said codicils, of sound and disposing mind and capable of making a valid deed or contract? Was the execution of either said will or either of said codicils by the said Frederick Stutz procured by the fraud, undue influence, or [Seal] coercion of Charlotte Eberbach, George F. Stutz, John A. Stutz, or Pauline Steck, or any other person or persons? ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 52-81

**Legal Notices.****A. Coulter Wells, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

Estate of William Franklin Lewellen, Deceased.  
No. 14,907. Administration Docket 87.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary Jane Lewellen, it is ordered this 27th day of December, A. D. 1907, that Colman Lewellen, John N. Lewellen, Levarah Jenkins, Ada Lewellen, John Calvert, Benjamin Lewellen, James W. Lewellen, Maggie Williams, Sarah Malory, Vernie Lewellen, Lizzie Lewellen, Charles Hoard, W. F. Calvert, Jasper Newton Calvert, Cora E. C. Baker, and Mary J. C. Arbuthnot, and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Tuesday, the 28th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty day before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-81

**Ellen S. Mussey, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Anna Smith Mallett, Deceased.  
No. 14,901. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by Frank B. King, named as executor therein, it is ordered this 24th day of December, A. D. 1907, that Lucy Smith, Hawleyville, Conn.; Joseph Smith, Boston, Mass.; Alice Smith Cook, Brattleboro, Vermont; Emily Peck Kellogg, Bridgeport, Conn.; Mary J. Woodruff, Bridgeport, Conn.; Joseph Kissam, Long Island, N. Y.; Henry Kissam, Long Island, N. Y.; Phillip Kissam, Long Island, N. Y.; George Kissam, Long Island, N. Y.; Chester Park, Long Island, N. Y.; Sarah Josephine Baylis, New York City; Isabel Baylis, New York City; Henry L. Foote, Brookfield Center, Conn.; Mrs. Frederick S. Irish, Brookfield Center, Conn.; John A. Peck, Pelham Manor, N. Y.; William Peck, New York City; William Foote, Mount Kisco, N. Y.; Cornelia Foote Dunning, Bethel, Conn.; Lizzie Keeler Van York, Bridgeport, Conn.; Clara Keeler, Bridgeport, Conn.; Clarence Keeler, Danbury, Conn.; Frank Hawley, Danbury, Conn.; Herman Keeler, Rome, N. Y.; Luther Cox, San Francisco, Cal.; Joseph C. Green, Wellington, Mass.; Sarah S. Steiner, Baltimore, Md.; Emory W. Fenn, Waterbury, Conn.; Esther Augusta Fenn, Waterbury, Conn.; J. Richard Smith, Waterbury, Conn.; Anson P. Smith, Sandy Hook, Conn.; Alice H. Clark, Shelton, Conn.; Mary A. Greene, Edward K. Smith, Lucy A. Smith, Mrs. Sylvia Nichols Northrop, Newton, Conn.; Miss Sarah James Nichols, Long Hill, Conn.; Mrs. Catherine Jackson Mallett, Monroe, Conn.; John Jackson, Stepney Depot, Conn.; Charley Jackson, Stepney Depot, Conn.; Edward Sherman, Bridgeport, Conn.; Stephen Gregory Nichols, Mary Shelton Fairchild, Bridgeport, Conn.; Willson Hurd, Long Hill, Conn.; John Hurd, Long Hill, Conn.; Edward Hurd, Monroe, Conn.; Jean Shelton, Bridgeport, Conn.; Anna G. Shelton, Bridgeport, Conn., a minor; Robert Philo Shelton, Bridgeport, Conn., a minor; and all the unknown heirs at law, next of kin, and all others concerned appear in said court on Wednesday, the 29th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-81

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

**Harry G. Kimball, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Charles H. Adams, Deceased.**  
**No. 14,875. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Mildred B. Jorgensen, it is ordered this 23d day of December, A. D. 1907, that Albert H. Adams, Elvira H. Adams, Mrs. Caroline A. Griffith, Howard O. Adams, and the unknown heirs at law and next of kin of Charles H. Adams, deceased, and all others concerned, appear in said court on Wednesday, the 29th day of January, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before their return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD, Justice.**  
**Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-St**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charlotte S. Preinhardt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of December, 1907. **THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Elcheiberger, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,123. Administration. [Seal.] 52-St**

**J. A. Butler and C. W. Stetson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Frederick S. Glehner v. The Unknown Heirs, Devisees, or Alienees of John Wilmore, Jr.**  
**Equity No. 27,460.**

The object of this suit is to perfect the title of complainant to lots 46, 47, 48, and the west 10 feet 6 1/4 inches front by the depth of lot 49, in the recorded subdivision of square east of square 88, in the city of Washington, D. C., as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book R L H, page 804. On motion of the complainant, it is this 9th day of December, 1907, ordered that the defendants, the unknown heirs, devisees, or alienees of John Wilmore, Junior, cause their appearance to be entered herein on or before the first rule day occurring two months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published twice a month for two successive months prior to said return day in The Washington Law Reporter and The Washington Herald, sufficient cause having been shown to the satisfaction of the court for dispensing with a

[Seal] longer period of publication. **HARRY M. CLABAUGH, Chief Justice. A true copy.**  
**Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. dec 18, 20; jan 10, 17**

**Wm. M. Offley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry P. (sometimes known as Harry P.) Tharp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of December, 1907. **WALTER J. THARP, Executor, 812 F. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,801. Administration. [Seal.] 52-St**

**Legal Notices.**

**Alex. Muncaster, Gittings & Chamberlain, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Andrew W. Kirk et al., Complainants, v. Alice C. De Vaughn et al., Defendants. Equity, No. 27,423.**

The object of this suit is to partition the following described property according to the respective interests of the parties hereto and for a receiver and accounting, viz: All that portion of lot 21, square 378, beginning at the northeast corner of said lot; thence south along the west line of 9th street 19 feet 6 inches; thence west 88 feet 4 1/2 inches; thence north 19 feet 6 inches; thence east along the south line of E street to place of beginning. All those parts of lots 20 and 22, square 378, beginning at northeast corner of lot 22; thence south along the west line of 9th street 25.54 feet; thence west 110 feet; thence north 25.54 feet; thence east to beginning. All of lots 1 and 2, square 433. On motion of the complainants it is this 6th day of December, 1907, ordered that the defendants, Alice C. De Vaughn, Iola P. Spaulding, Frank De Vaughn Phillips, Ernest S. Bartlett, John H. De Vaughn, and the unknown heirs, alienees, and devisees of William F. De Vaughn, Jr., and Jane Davis, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in

The Washington Law Reporter and The Washington Post. **ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. dec 18-20; jan 10-17; feb 14-21**

**FOURTH INSERTION.**

**B. F. Leighton, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Katherine M. Ruppert, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Andrew Coyle, Deceased, Defendants.**  
**No. 27,448. In Equity.**

The object of this suit is to establish title by adverse possession to lot sixty-one (61) of T. Franklin Schnelder's subdivision of square four hundred and eighty-two (482), as per plat recorded in book 17, folio 122, of the records of the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 4th day of December, A. D. 1907, ordered that the defendants cause their appearance to be entered herein on or before the first Tuesday of March, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post twice a month for the months of December, 1907, January and February, 1908. By the Court: **ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. dec 6-13, '07; jan 3-10; feb 6-13, '08**

**FIFTH INSERTION.**

**Howard Boyd, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Charles E. Tribby v. Caroline S. Bowles Murphy, alias Carrie S. Bowles Murphy, and the Unknown Heirs, Devisees, and Alienees of John Arnot, Deceased, Defendants. Equity No. 27,308.**

The object of this suit is to establish title in the complainant by adverse possession to lot seven (7) in the subdivision of square three hundred and eight (308) in the city of Washington, District of Columbia, as recorded in subdivision book 10 at page 92, of the records of the surveyor of said District. On motion of the complainant, by Howard Boyd, his attorney, it is this 21st day of November, 1907, ordered that Caroline S. Bowles Murphy, otherwise known as Carrie S. Bowles Murphy, and the unknown heirs, devisees, and alienees of John Arnot, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month and twice a month during the next two months in The Washington Law Reporter and The Washington Herald. **HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. nov 22-23; dec 6; jan 3-10; feb 7-14**

[Seal] **Justice blanks of every description for sale at this office.**

# The Washington Law Reporter

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WASHINGTON, D. C. - - - JANUARY 17, 1908

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### Portrait of the Late Chief Justice Alvey.

A life-size bust portrait of the late Richard H. Alvey, the first chief justice of the Court of Appeals of this District, was hung on the walls of the court room on January 10, 1908. The portrait is splendidly executed and is a striking likeness of the great chief justice, and has been greatly admired. It is the work of Mr. Richard N. Brooke, a well-known artist of this city, and was painted at the instance of the Bar Association of this District.

### DECISIONS BY THE COURT OF APPEALS.

#### Contracts—Penalties—Liquidated Damages.

In District of Columbia v. Harlan & Hollingsworth Co., the appeal was from a judgment for plaintiff in an action to recover a balance claimed to be due upon a contract for the construction of a fireboat. The appellant claimed the right to deduct from the contract price \$3,300, being at the rate of \$25 per day for each day during which the contractor was in default, as liquidated damages, in accordance with the provisions of the contract. The plaintiff contended that this provision of the contract called for a penalty and not liquidated damages, and that defendant could only deduct the damages actually sustained, and this view was adopted by the court below. The

Court of Appeals, in an opinion by Mr. Justice Van Orsdel, takes the contrary view and holds that the defendant was entitled to the reduction claimed, as liquidated damages, and reverses the judgment below.

#### Market Company—Nuisance—Unlawful Occupation of Sidewalk.

In O'Dwyer v. Northern Market Company, the appeal was from a judgment for defendant in an action for personal injuries sustained in slipping on green vegetable matter on the sidewalk adjoining the market building. The evidence tended to show that the market company exercised control over the sidewalk at the place of the accident, and received compensation from hucksters occupying it. The plaintiff contended that the market company was responsible for the nuisance and that the District had negligently suffered such nuisance to continue. The Court of Appeals, in an opinion by Mr. Justice Robb, reverses the judgment because of error in the instructions granted the market company by the trial court.

#### Early Days of the Supreme Court of this District.

The recent address of Mr. Justice Barnard on "Early Days of the Supreme Court of this District," delivered at the request of the Bar Association, is printed in full in another column. The address was listened to with much interest by those who were privileged to hear it, and we are assured all of our readers will be glad to have it thus preserved in permanent form. Justice Barnard is especially qualified by his long and intimate acquaintance with the work of the court, as an assistant clerk, a member of its bar, and for some years past one of its justices, to speak of its history. Our readers will be glad also to look upon the faces of some of the early judges of the court whose pictures illustrate the address.

The judicial history of the District is full of interest, and it has numbered among its judges many men eminent for their abilities. The illustrations given with the address of Mr. Justice Barnard are the first that have appeared in THE WASHINGTON LAW REPORTER, but we believe the innovation is one that will be approved of by our readers. It is our purpose, at an early day, to begin the publication each week of the picture of one of the judges who have sat upon the bench of this District, and the publication will be continued until all of them, including the present judges, have been included. Difficulty will be experienced, doubtless, in obtaining photographs of some of our early judges, and any of our readers having such photographs will confer a favor by allowing us the use of them.

## The Early Days of the Supreme Court of the District of Columbia.

Address Before the Bar Association of the District of Columbia, Dec. 19, 1907, by Justice Job Barnard.

### GENTLEMEN OF THE BAR:

It is my purpose tonight to speak of the early days of the Supreme Court of the District of Columbia, and of the men who first constituted the same.

The year 1863 found this District in a greatly disturbed condition, in consequence of the civil war that was then shaking the foundations of all our institutions. The rebellion had not yet reached its high-water mark; the emancipation proclamation had just been issued by President Lincoln; the Union was making its most intense struggle for life; and the public authorities, having in hand the conduct of the civil and military affairs of the nation, felt the necessity of having strong and tried men in every responsible, position—executive, legislative, and judicial.

The Circuit Court of this District, then the court of general jurisdiction, consisted of three judges, namely, Chief Judge James Dunlop and Assistant Judges James S. Morsell and William M. Merrick.

At that time there was also a separate court for the trial of criminal cases, the judge being Thomas H. Crawford, who had been ill since November, 1862, and who died January 28, 1863. Because of his illness and death the work of trying the criminal cases, of which there were then a great number, was imposed upon one of the judges of the circuit court, which court was already burdened with an extra amount of litigation of a civil character.

Judge Morsell had then been on the bench some forty-eight years, and was practically superannuated; so that the judicial labor then required in the trial of the civil and criminal cases of this District, fell mostly upon two men—Judge Dunlop and Judge Merrick.

This condition of the court, as well as the system then in vogue, became the subject of inquiry in Congress; and an act was prepared to reorganize the courts in this District; and after earnest debate, the same became a law on March 3, 1863 (12th Statutes at Large, 762).

No method for appeals or revision of the judgments of the circuit court was provided by the act of February 27, 1801 (2nd Statutes at Large, 103), under which the court was organized, except by direct appeal to the Supreme Court of the United States. The new act provided for appeals to the court in general term, similar to the system in New York upon which the act was based.

There was no charge of disloyalty to the Government made against either of the judges of the old circuit court, and they would have been eligible to appointment as justices of the Supreme Court to be created by said act, had it been deemed wise by the President to nominate them; but at that particular time the President regarded it of the utmost importance that there should be a court in the national capital composed of judges of national reputation, with positive and strong convictions, in accord with the policies of the administration, on all important questions then disturbing the country. The law was so

framed as to abolish both the criminal court and the circuit court, and to transfer all the business and jurisdiction of both these courts to the new court to be created, and leaving to the President the choice of nominating as judges of this new court such men as he might deem most advisable.

Under this statute, Mr. Lincoln, on March 11, 1863, sent to the Senate, then holding an extra session, the names of four men selected by him to constitute the new bench, all of whom were well known to the country to be strong, conservative, and loyal to the administration.

Three of these men had been members of Congress and one was a local man.

David K. Carter, of Ohio, was named to be chief justice, and Abraham B. Olin, of New York, George P. Fisher, of Delaware, and Andrew Wylie, of the District of Columbia, associate justices, the statute using these titles to designate the judges, instead of the titles of chief judge and assistant judges, which were used in the act creating the old circuit court.

Chief Justice Carter had been one of the delegates from Ohio to the Republican convention held in Chicago in 1860, and his influence and vote secured the four votes from Ohio to be changed from Mr. Chase to Mr. Lincoln, which gave him a majority on the third ballot. Before the result of that ballot had been announced, it was known by those who kept tally, that Mr. Lincoln had 231½ votes out of a total of 466, and needed one ballot and a half to constitute a majority. While the tellers were adjusting the count, and before the announcement was made Carter sprang upon a chair and announced a change of four votes from Ohio, from Chase to Lincoln, the Ohio delegation up to that time having voted solidly in each of the three ballots taken for Chase. This change of vote giving Mr. Lincoln a majority, other delegates announced changes of their votes, until when the result of the vote was finally announced by the chair, the number had reached 364, and as soon as the applause that followed permitted, Mr. Evarts from New York, who spoke for Mr. Seward and for the New York delegation, moved to make the nomination unanimous, which was carried with wild applause (2d volume, Life of Abraham Lincoln, by Nicolay & Hay, 275).

Justice Olin was a member of the 37th Congress, which expired on March 3, 1863, and had charge of the bill in the House, authorizing the draft to fill the quotas in the Army, which became a law on the last day of that Congress. He had not only earnestly advocated that bill, but had, by his service in other matters, greatly strengthened the legislation in support of the prosecution of the war, and of the various policies of the administration.

Justice Fisher was also a member of the same Congress, and he had been active in support of important administration measures, and also in endeavoring to have Mr. Lincoln's scheme for compensated emancipation adopted by the State of Delaware, a scheme somewhat similar to that which finally became a law applicable to the District of Columbia, and which resulted in the emancipation of the slaves in this District on April 16, 1862. The Delaware legislature was to pass a law abolishing all the slaves then owned in that State, in ten annual installments, or 180 slaves a year, there being 1,800; and Congress was to pass an

act giving Delaware bonds for \$900,000, without interest, payable in ten annual installments as the slaves became free, this being \$500 per head. Bills were prepared and submitted embracing this scheme, but they failed to pass.

Justice Wylie resided in Alexandria, Virginia, at the time of the election of President Lincoln, and had been known to be an avowed Republican; and he was the only man in the city of Alexandria who voted for Mr. Lincoln. His open avowal of his political principles had subjected him to threats that he would be shot if he voted for Mr. Lincoln, and after the election he was fired upon by some one while sitting on his porch, the bullet striking and breaking a glass which he held in his hand, and shortly after that he removed from Alexandria to Washington.

The following editorial appeared in the "Evening Star" of March 11, 1863, and shows the peculiar conditions then existing in this District:

"THE DISTRICT JUDICIARY.

"This forenoon the President we know sent to the Senate the nominations of the following gentlemen to compose the United States Bench for this District, viz: Hon. D. K. Cartter, of Ohio, C. J.; Hon. A. B. Olin, of New York; Hon. G. P. Fisher, of Delaware, and Judge Wylie of our late criminal court.

"In making these appointments it is evident that the President was influenced by considerations growing for the most part out of the anomalous condition of the District affairs, arising from the war, for which the country is indebted to secession.

"The nation at large never had so deep a stake in the affairs of the District of Columbia as at this time, necessarily far overshadowing any local considerations whatever in the judgment of the Executive. The country holds him responsible that the administration of justice here shall tend, past peradventure, to conserve the Government's hold upon the District and the border States, as the means of ultimately compelling the obedience of the rebellious States to the laws.

"Under the existing condition of affairs here, therefore, it is by no means strange that in making these appointments he should have sought nominees known well to the whole country having this momentous stake involved, rather than gentlemen of this community, who however well known and confided in at home, are unknown to the country in connection with the troubles of the times.

"The gentleman nominated, with the exception of our fellow-citizen Judge Wylie, have all served in Congress, where the interests of the District never had warmer friends than they were.

"Their competence is all that our public could ask, while we may not inappropriately add that all are conservative.

"Under these circumstances we sincerely believe their selection to be the subject of congratulation to this community.

"Some of our fellow-citizens doubtless have preferred others on personal grounds, but personal considerations should not and could not safely be permitted to influence the President's actions in such a case. It is not to be expected that those not sincerely and thoroughly loyal at heart will approve this executive action, but as that which would please them would, of course, tend to endanger

the safety of the State, it matters nothing whether they are pleased or not.

"It is to be presumed that the Senate will at once confirm the nominations in question."

These nominations were confirmed by the Senate on March 12th, but the confirmation of Mr. Justice Wylie was reconsidered, and as to him, the extra session adjourned without further action.

The Senate adjourned on March 13th, and on March 18th the President commissioned Mr. Justice Wylie as a recess appointment, and he was qualified with the others, and they first met in the city hall, now the United States courthouse, to organize the new court on March 23, 1863.

The first official act of the court was to appoint Return J. Meigs clerk, who gave bond as such in the sum of \$2,000, the bond being approved by the justices, and the oath of office was administered to him by the chief justice.

Thereupon they ordered all the record books, papers, and files appertaining to the old circuit, district, and criminal courts of the District of Columbia to be placed in the custody of the clerk.

They also ordered that the clerk make a roll of the proctors, solicitors, attorneys, and counsellors of the Supreme Court of the District of Columbia, embracing therein the names of such proctors, solicitors, attorneys, and counsellors, of the District of Columbia, as shall before him subscribe and take the oath that the said justices have subscribed and taken—that is to say, the oath prescribed by the act of Congress entitled, "An act to prescribe an oath of office, and for other purposes," approved July 2, 1862. This was called in those days the "iron-clad oath."

They also ordered a special term of the court to be held on the first Monday of April, for the trial of criminal cases; and that a grand and petit jury be selected and notified to attend at that time. And thereupon their first meeting was adjourned.

A number of the attorneys took the said oath, and were entered upon the roll of attorneys of the new court on the same day.

Justice Fisher was assigned to hold the criminal court for the April term, and proceeded to the trial of numerous criminal cases that were then waiting to be heard.

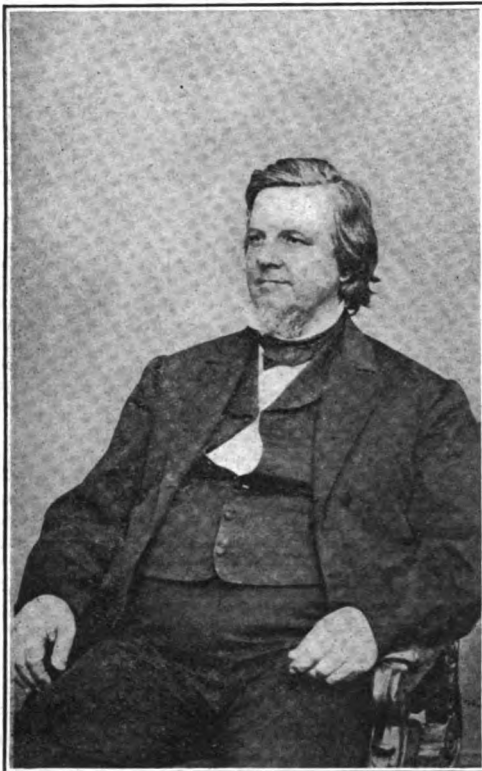
On May 4, 1863, the first regular session of the court met in general term, and caused a memorandum of the meeting on March 23d to be recorded and made part of the proceedings of the court in general term, by being then approved; and on that day the court ordered that the rules of practice of the late courts of the District of Columbia be continued in force for regulating the proceedings of this court, so far as the same are applicable thereto, until further order.

In addition to the order providing a bar, made on the 23d of March, the court ordered that applicants for admission may be admitted either by special order of the court, or after examination by a committee of the bar, to be appointed from time to time; and, thereupon, Thomas J. D. Fuller and George Tucker, were, on motion, admitted to the bar.

William Redin, Joseph H. Bradley, and Michael Thompson were appointed a committee to examine applicants, and, on their report, filed the same day, Robert B. Caverly and Meigs Jackson were admitted.

The court then ordered a special term to be

held, commencing on the second Monday of May, for the trial of all such matters of a civil nature, not requiring a jury, as appertained to the jurisdiction of this court at a special term; and that a special term be held, commencing on Tuesday, the 14th day of May, for the trial of crimes and offenses arising within the District of Columbia, and for the delivery of the jail of said District, and ordered a grand and petit jury for that term; and also ordered, for the trial of all matters of law requiring a jury, and matters at law and in equity appertaining to the jurisdiction of this court, a special term to be held, commencing on



CHIEF JUSTICE CARTER.

Monday, June 1st, and that a jury be selected and notified to attend said term.

William Redin, Joseph H. Bradley, Walter D. Davidge, R. H. Gillett, and the clerk of the court were appointed a committee to prepare rules of practice for the several courts.

Henry Baldwin, Peter H. Watson, — Whiting, Charles Mason, Joseph J. Coombs, and the clerk were appointed a committee to prepare rules of practice in patent cases, and William Redin was appointed auditor in chancery.

The appointment of Hester L. Stevens, previously made at the special term of the court for criminal business, as commissioner in admiralty, was confirmed, and he was appointed such commissioner.

The court in general term continued to meet from day to day, admitting aliens to become

naturalized as citizens, and doing such other business as came before it.

On May 8, 1863, Andrew Hall, a person of color, under the age of twenty-one, came, by his next friend, John C. Underwood, and filed a petition for a writ of habeas corpus, averring that he was unlawfully dispossessed of his liberty and imprisoned in the common jail of the District, in custody of Ward H. Lamon, marshal, and the writ was immediately granted, requiring the marshal to have the body of said Hall before the court on the next day at 10 o'clock; and at that time the marshal produced the body, and made his return, from which it appeared that the said Hall had been arrested by virtue of a warrant issued by direction of Mr. Justice Wylie, on the petition of George W. Duvall, of George, a citizen of Prince George's County, Maryland, filed April 20, 1863, in which he had set forth that the said Andrew Hall, and two other negroes named, had absconded from him, and were fugitives from service and labor due and owing to him, and that they were then in the District of Columbia.

Thereupon the case was argued by John Dean and John Jolliffe, as attorneys for the relator, and by Walter S. Cox and Joseph H. Bradley, attorneys for the claimant, the argument lasting several days.

On the 13th, the court ordered a reargument, which was had on May 21st; and on the 22d, the court announced that it was equally divided, two of the justices holding that the relator ought to be discharged from arrest, and the other two being of the opinion that he is subject to arrest and delivery to his master, under the fugitive slave law. The court therefore denied relief under the writ of habeas corpus, and remanded Hall to the custody of the marshal, to be by him safely kept until the further order of the justice who had ordered his arrest, Mr. Justice Wylie.

It appears that thereupon Mr. Justice Wylie discharged him, and his attorneys were afterwards indicted, charged with having, with force and arms, hindered and prevented said Duvall from arresting and seizing said Hall; and also charged with unlawfully seizing, carrying away, and rescuing said Hall from the custody and control of said Duvall, his master; and with assisting and abetting said Hall to escape from the custody and control of said Duvall, they well knowing the said Hall to be a fugitive from service and labor from the State of Maryland.

This case is No. 362 on the criminal docket; but it appears that no trial was ever had, and the case was nolle prossed on February 23, 1864.

It will be remembered that the emancipation proclamation, signed by President Lincoln, on January 1, 1863, only applied to those States and parts of States that were then in rebellion against the United States, which did not include any part of Maryland.

The right to hold slaves in Maryland not having been affected thereby, slavery continued in that State until it was abolished by the new Constitution which was adopted in October 1864.

The case of Hall was not the only one where the Supreme Court of the District of Columbia was called upon to arrest fugitive slaves from Maryland, and to restore them to their masters, there being fifteen others for which warrants were issued by direction of Justice Wylie, or Justice Fisher, from April 14 to April 29, 1863.

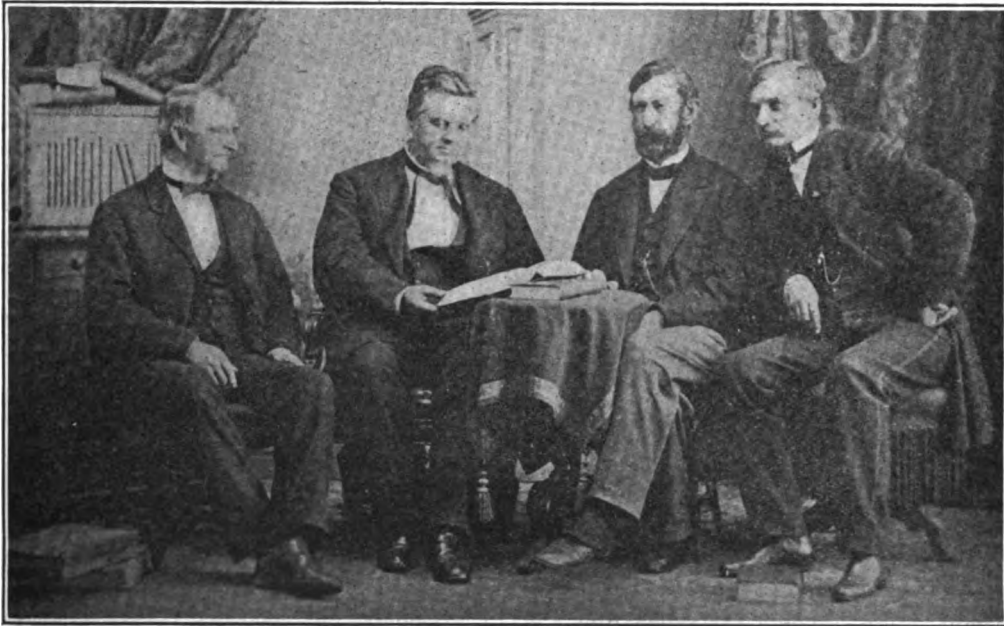


The Hall case, however, seems to be the first case of importance to be argued before the new court, and it was of such great interest that each of the judges delivered an opinion therein. These are reported in volume 6, District of Columbia Reports, page 10.

Chief Justice Cartter and Justice Fisher were of the opinion that the court had power to execute the fugitive slave law; and for that reason they were disposed to remand the petitioner to the marshal, for the purpose of restoring him to his master; but Mr. Justice Olin, and Mr. Justice Wylie thought that the fugitive slave law was not applicable to the District of Columbia, and that there was no statutory authority in this court to

test Hall, and to prevent a further conflict vi et armis, took him to the station house for safe keeping.

The provost marshal, Major Sherburne, sent men under the command of Lieutenant Baker to the station house for Hall, and Mr. Webb turned him over to the military authorities, and later Mr. Webb, Mr. Duvall, and Mr. Bradley went to the provost marshal to find out what had been done with him and were told that he had been sent to the contraband camp to be held there until Major-General Hitchcock, who was then commissioner for exchange of prisoners, could hear the matter next day and say what ought to be done with him.



WYLIE,

CARTTER,

OLIN,

FISHER.

assist the owners of fugitive slaves in securing their property.

Being equally divided, the matter was left as it was before the argument, and Justice Wylie, entertaining the views that he did, directed the relator to be discharged. When Hall was on his way out of the courthouse, after such discharge, Mr. Duvall seized him by the collar, and his friends interfered, and he was again taken before Justice Wylie, and counsel asked to have Mr. Duvall punished for a contempt of court. Justice Wylie intimated that he could not permit Hall to be seized in the manner in which it had been represented to him that he had been seized, while in the courthouse; but there seems to have been no further action taken for the alleged contempt, and later it appears that Mr. Dean also seized Hall, holding him by the collar, to prevent him from being taken by force by Mr. Duvall.

This contention caused so much disturbance that Mr. William B. Webb, then chief of police, came to the courthouse with other officers to pro-

tect Hall, and to prevent a further conflict vi et armis, took him to the station house for safe keeping.

The second grand jury, summoned for the May term, was composed of the following citizens: Henry Naylor, foreman; James S. Casparis, Thomas B. Brown, William H. Forrest, J. W. Fitzhugh, Thomas Purcell, George A. W. Randall, Robert H. Graham, Horatio E. Berry, John H. Russell, J. T. K. Plant, A. H. Paul, John D. Boyd, William Richards, John Corcoran, John A. Peake, James Wallace, A. G. Pumphrey, and R. W. Fenwick.

A special report made by them at the close of their services on June 10th (volume 1, page 242, of the Minutes of the Criminal Court), shows the bad condition of affairs existing at that time in this District. It says there were then retained indefinitely in the jail many persons by reason of witnesses having absconded, or having been sent off with the Army, or for other causes, and it suggests that a careful canvass of the jail docket be made, and that an attempt be made to obtain witnesses in every case to be brought before the next grand jury, because it says the magnitude of

the evil and suffering caused in this way is so great that immediate efforts should be made to render the same better.

It also states that the number of petit cases which ought to be disposed of by the city magistrates, but which are brought up to the grand jury, is legion, and it suggests remedies for that condition.

It further states that the city is full of colored servants, who are ignorant of law, and the penalty attaching to crime, and who are committed for theft, and that the jail is not sufficient to hold the great numbers daily committed.

It suggests the necessity for a house of refuge, or reform school, to which boys can be sent; and it calls attention to other evil conditions which affected the young and verdant soldiers from inland towns of the different States of the country.

The criminal cases, as shown by Criminal Docket No. 1, which were tried during the first months of this new court, were not different in character from those usually tried in criminal courts, save a few who were indicted for procuring soldiers to desert, for aiding and abetting rebellion, for rescuing fugitive slaves, or for treason.

The clerk began a new series of numbers for the cases in the different branches of the court, which series has continued to the present time.

Abraham Baldwin Olin, son of Gideon Olin, was born in Shaftsbury, Vermont, in 1808. He graduated at Williams College in Massachusetts in 1835; studied law, and was admitted to the bar in Troy, New York, in 1838, of which city he was recorder for three years. He was elected to Congress as a Republican from the Troy district, and took his seat December 7, 1857; and he was reelected, and continued in Congress until March 3, 1863. He remained upon the bench until January 13, 1879, when he retired. He died in Washington City, July 7th of the same year.

On the occasion of his retirement from the bench, fifty of the active and prominent members of the bar sent a letter to him; and on the occasion of his death, a meeting of the bench and bar adopted appropriate resolutions, which letter and resolutions will be found in volume 3 of MacArthur's Reports.

The esteem in which he was held by the bar is expressed by them in these words:

"During the long term that you have been a member of the court your learning and ability, your almost intuitive perception of right, your enthusiastic love for justice, your broad and comprehensive understanding of legal and equitable principles, and your veneration for authority and precedent have done much to give stability to the judgments of the court and have illustrated your eminent fitness for the position which you have occupied.

"During the whole of your service upon the bench our personal relations have been of the kindest character, and our respect for you as a judge has always been associated with the most sincere regard for you as a man."

The reports in which Justice Olin's opinions appear are the MacArthur Reports, 3 volumes, and the 6th and 7th D. C. Reports, prepared by Franklin H. Mackey, volume 6 embracing those cases reported from the organization of the court in 1863 to November 19, 1868, and volume 7 containing cases decided from February, 1869, to February, 1872, inclusive.

George Purnell Fisher was born in Milford, Kent County, Delaware, October 13, 1817. He attended St. Mary's College, Baltimore, one year, and then went to Carlisle, Pa., and graduated from Dickinson College in 1838. He studied law and was admitted to the bar in 1841. From 1857 to 1860 he was attorney-general for the State of Delaware; and he was elected to the 37th Congress from that State, and remained there until the close of his term, March 3, 1863. He continued on the bench until April 1870, when he was appointed by President Grant, as Attorney of the United States, for the District of Columbia, succeeding General Edward C. Carrington.

His opinions as judge, which have been reported, are all contained in volumes 6 and 7, D. C. Reports.

Mr. Justice Fisher sat in the trial of John H. Surratt, and during that trial, for use of language, and objectionable conduct which he held to be in contempt of court, he passed an order striking the name of Mr. Joseph H. Bradley, one of the attorneys for the defendant, and a leading member of the bar, from the roll of attorneys of the criminal court.

A bitter controversy grew out of this, and Judge Fisher was sued for damages by Mr. Bradley, the case being decided against the plaintiff, and affirmed by the court in general term, a report of which will be found in volume 7, D. C. Reports, page 32.

The case was then taken by writ of error to the Supreme Court of the United States, and there affirmed by that court. It is reported in 80th United States (13 Wallace), page 335.

Before this case was heard in the Supreme Court of the United States, the Supreme Court of the District of Columbia, in general term, had required Mr. Bradley to show cause why he should not be disbarred from that court, and on his answer, had made an order striking his name from the roll of attorneys of the Supreme Court of the District of Columbia. He then applied to the Supreme Court of the United States for a writ of mandamus, to compel the Supreme Court of the District of Columbia to restore him to the office of attorney and counselor, from which he alleged he had been wrongfully removed by the said court, on November 9, 1867.

To that petition the Supreme Court of the District of Columbia made return and the matter was heard and the writ ordered to issue, the reason alleged in the opinion by Mr. Justice Nelson being that the alleged contempt was committed in the criminal court, which was a separate court from that of the Supreme Court of the District of Columbia, under the terms of the said act of March 3, 1863, although held by one of its judges; and that, therefore, the Supreme Court of the District of Columbia acted without jurisdiction in removing Mr. Bradley from its bar, for misconduct in the criminal court. The case is reported in 7th Wallace, 364.

Congress interposed to make the organic act more explicit, and by act of June 21, 1870 (16 Statutes at Large, 160), it was provided that the special terms of the circuit courts, the district courts, and the criminal courts, authorized by the said act of March 3, 1863, "which have been or may be held shall be, and are declared to be, severally, terms of the Supreme Court of the District of Columbia."



■ On receipt of the writ of mandamus from the Supreme Court of the United States, the Supreme Court of the District of Columbia passed an order (1st Minutes General Term, 323), rescinding the order striking Mr. Bradley's name from the roll of attorneys; and at the same time, by virtue of its power to make rules, adopted a rule as follows:

"No attorney or counsellor who has heretofore been or may hereafter be suspended from practice or dismissed from the bar by the order of either of the courts organized by said act (March 3, 1863), for contempt of court or professional misconduct, shall be allowed to practice in any other of said courts so long as such order shall remain in force."

Thereafter Mr. Bradley made several attempts to be reinstated, claiming that the rule was *ex post facto* as to him; and after much consideration, and by an opinion recorded in the minutes of the general term, the court indicated that his remedy would be to make an apology and seek an order in the criminal court setting aside the order disbaring him there before the court in general term would undertake to allow him to practice in the other branches of the court. He refused to pursue that course, and so the court, by express order, made the said rule applicable in his case, and his disbarment was continued for a number of years. He was reinstated in his rights at the bar on motion of Thomas J. Durant on September 28, 1874, shortly after the death of his son, Joseph H. Bradley, Jr. (2 M. G. T., 352).

Justice Fisher remained in his office of United States Attorney for the District of Columbia until he was succeeded by Henry H. Wells, and thereafter he resided in this District and in Delaware. He was First Auditor of the Treasury Department during President Harrison's administration. He died in this city on the 10th day of February, 1899, in his eighty-second year.

— (See paper on *Life and Character of Justice Fisher*, by Hon. Charles B. Lore, Chief Justice of Delaware, read before Historical Society of Delaware, February 17, 1902.)

Andrew Wylie was born at Connorsburg, Pa., February 25, 1814. His father was president of Washington University in Pennsylvania, and when he was a lad his father moved to Bloomington, Ind., and became president of the Indiana State University.

Judge Wylie graduated at Bloomington, and then went to Lexington, Ky., where he studied law, and attended the Transylvania University. He wanted to settle in the south, but his father was opposed to having him go to a slave State, so he went to Pittsburg, and entered the office of Walter Forward, then the leader of the bar of that city, and who was afterwards Secretary of the Treasury. He was admitted to the bar and began his practice in Pittsburg and was elected a member of the city council, and in 1845 was the city attorney. On March 6, 1845, he married Miss Mary Caroline Bryan, of Alexandria, Va., a relative of the Barbour family, of Virginia, and a sister of Thomas B. Bryan, of Chicago, a former Commissioner of this District. Ten days after his return from his wedding the great Pittsburg fire occurred, which swept away about one-third of the city. He then went to Indiana, and after remaining there a short time returned to Pittsburg, and finding business there much disturbed came to Washington City and was admitted to the

bar of the old circuit court on February 19, 1849. He resided, however, in Alexandria City, Va., until after the election of President Lincoln in 1860.

Shortly before the 3d of March, 1863, through the influence of his friends, Edwin M. Stanton, Secretary of War, and Henry S. Lane, Senator from Indiana, President Lincoln nominated him for the position of judge of the criminal court, to succeed judge Crawford. Before his confirmation by the Senate, the criminal court was abolished, and the Supreme Court of the District of Columbia provided for, and his nomination was made as one of the justices of that court.

He remained on the bench from March, 1863, until May 1, 1885, when he retired at the age of seventy-two years.

He sat in the second trial of John H. Surratt, for the murder of President Lincoln, when the defendant was acquitted.

Judge Fisher sat at the first trial, when William B. Todd was foreman of the jury, which failed to agree and was discharged.

Justice Wylie issued a writ of habeas corpus for Mrs. Surratt, but the return was made that the writ was suspended by order of the President, Andrew Johnson; and Mrs. Surratt was executed, without having an inquiry under the writ, she having been convicted by a military court.

Judge Wylie's first commission is dated March 18, 1863; but after he was confirmed by the Senate, he received a second commission bearing date January 20, 1864 (1st M. G. T., 46).

The opinions delivered by Justice Wylie, so far as reported, are all contained in the first ten volumes of the District of Columbia Reports, ending with 4th Mackey.

The bar adopted resolutions expressive of their feelings when he resigned, and they are found in 4th Mackey.

He died August 1, 1905, at his home in Washington City, in his ninety-second year.

Memorial services were held in the old circuit court room, at which Mr. Justice Hagner presided, and Mr. Nathaniel Wilson read a sketch of his life, showing his great ability and courage as a judge and the appreciation in which he was held by the bar. This paper and an account of the proceedings will be found in volume 33 of the Washington Law Reporter, page 803.

Judge Wylie sat upon the equity bench more than any other judge during his term. He was also frequently assigned to hear appeals. His independent mind on legal matters often prevented him from being able to agree with the majority of the court when he sat in the general term, so that we find him dissenting in a number of cases. He was the last survivor of the original court, although Chief Justice Carter remained upon the bench longer than any other.

David Kellogg Cartter was born in Rochester, N. Y., June 22, 1812. His father was a carpenter, and he died when David was only 10 years old. The lad learned to be a printer, beginning the trade under the instructions of Thurlow Weed. He afterwards studied law with an older brother and was admitted to the bar in Rochester in 1834. He married Miss Nancy H. Hanford, of Scottsville, N. Y., July 6, 1836. They removed to Akron, Ohio; afterwards to Massillon, and later to Cleveland, in all of which places he was engaged in the practice of the law.

He was elected to Congress as a Democrat in 1849, and remained in Congress until March 3, 1853. He was appointed by President Lincoln as Minister to Bolivia, S. A., in March, 1861.

He was chief justice of this court from March 11, 1863, until his death, April 16, 1887, in the seventy-fifth year of his age.

Resolutions adopted by the bar upon his death will be found in 5th Mackey, which is the last volume in which any of his reported opinions are found.

During his incumbency in office the Supreme Court of the District of Columbia had been increased to six members, Justice MacArthur having been appointed as the fifth justice, July 15, 1870, under act of June 21, 1870 (16 Statutes at Large, 160); and Justice Cox having been appointed as the sixth justice, March 1, 1879, under act of February 25, 1879 (20 Statutes at Large, 320). The said act of June 21, 1870, abolished the orphan's court and added its jurisdiction to the Supreme Court of the District of Columbia.

Chief Justice Cartter was a man of great strength of mind, imbued with a strong sense of justice; and he had through his life been a great reader, although in his later years he read much less than formerly. He had quaint and original ways that naturally attracted attention. His personal appearance was remarkable. He had a leonine face, roughly marked by smallpox. He had a noticeable impediment in his speech, generally stopping in the middle of a word, which seemed to give force to his utterances rather than to detract from them.

The members of the bar who practiced before him, will no doubt readily recall many of the peculiar words of his vocabulary. The word "supervene" was one that he frequently used in his opinions.

Chief Justice Cartter had an active mind as well as an original one. He obtained several patents for inventions, one of which, obtained in November, 1876, was for a ventilating device for windows, etc. It is the device that he had put in operation in the windows of the courthouse, and which is still in use in most of the rooms, its object being to provide a constant current of fresh and pure air through the room without the irregular drafts and currents attendant upon open doors and windows. This device consists essentially of a ventilating chamber or casing permanently located between the frame and sash of the window, opening downward into the external air, and upward into the interior of the room, and which can be opened and closed by a rod at the side of the window.

In January, 1879, he obtained letters patent on a car-truck for street railways, the device consisting in having an independent axle for each wheel of the railway car, journaled in a swiveling-box at the outer end, and journaled in a box mounted in curved guides at the inner end, the whole scheme being an invention to obviate the difficulties attendant upon turning curves with cars on street railways.

About the same time he also took out letters patent on an improvement in coverings for beds, the object of which was to support the coverings of a bed, so that they would not come in immediate contact with the person, and the improvement was intended to alleviate the conditions of the sick and debilitated, so that they could be made

more comfortable, and could be more conveniently treated.

Mr. James L. Norris was his attorney in securing these patents.

Chief Justice Cartter met with a sore loss while he was Minister to Bolivia, in the death of his youngest son, David K. Cartter, Jr., who was a member of the Second Ohio Infantry. He died at Fort Scott, Kans., August 12, 1862, of typhoid fever. He was a young man about 21 years of age, and had been with his father previously in Bolivia. This loss so affected him that it was said to be the moving cause for resigning his position as minister and his return to Ohio.

A peculiar duty which Chief Justice Cartter performed was that of administering the oath of office to the cabinet ministers. It is said that he had sworn in all of the cabinet ministers, from the time of his appointment as chief justice of his court up to and including Robert T. Lincoln and the other members of the cabinet of President Garfield in 1881.

He was on intimate terms with many of these cabinet officers, including Seward, Stanton, Fish, Chandler, and Grant, and was recognized by them as a valued adviser.

With such men as Senators Wade, and Chandler, and the war leaders of Congress, he held a close relation to Mr. Lincoln.

He was frequently called upon to preside at mass meetings of citizens in the District of Columbia, one notable occasion being the meeting at Lincoln Hall, on January 20, 1880, to consider measures for the relief of the suffering poor or Ireland. On that occasion the hall was crowded, and among those on the platform were Senators Thurman of Ohio, Kernan of New York, Jones of Florida, Samuel J. Randall, Speaker of the House of Representatives, Representatives Benjamin Butterworth of Ohio, J. E. Kenna of West Virginia, G. B. Loring of Massachusetts, Fred Douglass, then marshal of this District, Hon. J. R. Hawley, Mr. A. M. Clapp, W. W. Corcoran, Rev. J. E. Rankin, and many other well-known citizens and officials.

As a specimen of his manner of speaking and thinking, I read his opening remarks at that meeting, as published in the National Republican of January 21, 1880.

"Fellow-citizens: After tendering my acknowledgments in view of the compliment to myself in calling me to preside over your deliberations, and in view of the fact that the existing distress and personal suffering obtaining in Ireland are more or less complicated with political and property considerations, the relative rights of Ireland as a constituent of the British Empire, and the legal and relative rights of landlord and tenant in the disposition of titles, you will permit me to disavow, on your behalf and for myself, any purpose through the agency of this meeting to influence either of these considerations.

"With us, as a republic, it has become a principle of international action, so often published and uniformly practiced as to become a constitutional tradition, that we will not interfere with the domestic political relations of the nations of Europe nor permit them to interfere with ours. This principle, right in itself, is eminently wise when applied to our peculiar territorial condition, made inaccessible for purposes of invasion or external violence by the two oceans which stand guard on

the east and the west, and possessed between them of all the material elements of comfort. Personally and as a people we are in the condition of absolute independence, and if trouble comes to this people we must borrow it by going abroad or create it within ourselves at home.

"Again, we have no interest in or control over the property relations of the subjects of Great Britain. They may be wrong, and, with reference to the tenure of real estate, they are wrong as viewed by us. Primogeniture and entail are inhibited by our Constitution and discouraged by the genius of all our institutions. Nevertheless, the inviolability of titles and the sacred character of contracts are watched with as much jealousy by our institutions and people as any nation on the globe, and it is eminently proper it should be so.

"The fee simple titles and a home are within the reach of every man having health, industry, and economy, and when health fails no people are quicker to rescue the unfortunate from want. These homes are indispensable among a free, self-governed people. Inside of these homes are first taught the lessons of authority and obedience, self-reliance and manhood, and in and around them are gathered the guarantees against future want—the providence of the husbandman. Without them and without the title that secures them to the owner would supervene agrarianism and communism not indigenous and as yet unnaturalized in this country.

"I have felt it proper to make this brief disavowal of the purposes of this meeting with a view of promoting its true object. We are assembled to organize the instrumentality of an instant active charity for the relief of the famishing under the supreme law of humanity, which tolerates no discrimination on account of geography, but makes every man our neighbor and brother, and in the case of the appeal now made to us we ought to come to the relief with cheerful good will. The sufferers are largely of our bone and blood, largely identified with our beginning and progress; a people constitutionally hospitable and generous; a people who, under like circumstances, would do to others as they would we should do unto them."

One who had heard him in the campaign of 1856, when he left the Democratic party and joined the Republican party, says of him that he put into the Fremont campaign all the vigor and energy he possessed. He stumped Ohio and Pennsylvania with great effect, and was regarded as the best stump speaker in the campaign.

The author had heard him at Franklin, Pa., and again in Meadville, and says that the little impediment or stutter in his speech added greatly to the strength and charm of his words and manner.

(See an article entitled "Celebrities at Home," in *The Republic*, a weekly journal of politics and society, published in Washington, October 30, 1880.)

In 1886, at the opening of the January term of the Supreme Court of the District of Columbia, holding a general term, there were present Justices MacArthur, Hagner, Cox, James, and Merrick on the bench, when the picture of Chief Justice Cartter, painted by Mr. Charles Armor, now hanging in Equity Court Room No. 1, was presented to the court by Mr. Reginald Fendall on behalf of the bar. In accepting this picture

for the court, Mr. Justice MacArthur said that it was a very satisfactory likeness, the features in fine relief, the expression excellent, perhaps a little severe, as if the chief justice was in the act of smashing a frivolous motion. He also said: "The chief justice had sat there nearly a quarter of a century, and they all knew the extraordinary ability he has shown—perhaps unparalleled—and that when in the future they should look upon this picture they would be reminded of his strong utterances."

His vigorous style of speech was evidently acquired before he came upon the bench, for in Ben Perley Poore's *Reminiscences*, vol. 1, page 390, the author speaks of Chief Justice Cartter, then a member of Congress, and says that, in criticising Daniel Webster's action as Secretary of State in negotiating with the Barings, Corcoran & Riggs, and Howland & Aspinwall drafts in payment of Mexican indemnity money for 3½ per cent premium, instead of accepting August Belmont's offer to negotiate them for 4 per cent premium, Justice Cartter used this language:

"I want the House to understand that I take no part with the house of Rothschild, or of Baring, or of Corcoran & Riggs. I look upon their scramble for money precisely as I would upon the contest of a set of black-legs around a gaming table over the last stake. They have all of them grown so large in gormandizing upon money that they have left the work of fleecing individuals, and taken to the enterprise of fleecing nations."

His original manner of speech is illustrated by many anecdotes that are still told of him among the older members of the bar.

Here is one which appeared in the Editor's Drawer in *Harper's Magazine* for September 1873:

"At a late term of the Circuit Court of the District of Columbia, Chief Justice Cartter presiding, the dignity of the proceedings was quite upset by the following incident:

"A suit was pending in which the plaintiff claimed full contract price for work partially performed, but not finished on account of fraud on the part of the defendant. The defense was that the plaintiff was not entitled to more than quantum meruit, because the defendant enjoyed no benefit from the work. The chief justice, who is troubled with a slight impediment of speech, speedily settled the point by stating, 'If a ma-a-an hired another ma-a-an to r-r-rub him with a br-r-ick, he's g-got to p-pay for it wh-whether he enj-j-joys it or not.'"

Another story is this: An attorney in the trial of a case before him was insisting with great earnestness that there had been an unbroken line of decisions in accordance with his contention for more than a hundred years. The authorities seemed to the chief justice to be based upon narrow or technical grounds, and not in accordance with his ideas of what was right and just under the facts developed in the case. He stopped the attorney and said to him, "You say that there has not been a decision of any of the courts contrary to your contention, for one hundred years?"

The attorney assured him that such was the fact.

Then the chief justice said: "Don't you think it is about time there was one," and then added: "there is going to be one in about five minutes."

The attorney was so taken back by the intimation from the bench, that he suspended his argu-

ment, and the line of decisions was at once broken by the ruling of the chief justice.

On one occasion I remember to have heard him deliver a brief oral opinion in general term, in a judgment creditor's suit. The bill had been filed some twenty years before, seeking payment from the equities which the judgment defendant then had in certain real estate which was covered by mortgages or deeds of trust, securing bona fide debts greater than the value of the land. The complainant did not prosecute his suit further than to file his bill, have process served, and an answer filed, showing the actual incumbrances. The case then slept until in the course of time the mortgages were discharged, and the property had been conveyed to other parties; and when an owner, who knew nothing of the *lis pendens*, was about transferring his title, a diligent title examiner found the suit still undisposed of, and reported it as a possible objection. The solicitor for the complainant, on being reminded of the case, undertook to proceed with it, and obtained a decree which would have taken an innocent purchaser's title from him if enforced. The owner, who had been made a party defendant, took an appeal, and the chief justice, in pronouncing the opinion of the court in general term, reversing the decree and remanding the case with directions to dismiss the bill, said, that "The complainant had allowed the case to sleep so long, that it would be a sin against somnambulism to wake it up now."

Another time I remember a case was being tried before him in which Mrs. Belva Lockwood was the attorney for the personal representative of a decedent. In her argument she became quite earnest, and in a high voice said, that if the court should decide contrary to the principle for which she was contending, that the deceased would get up out of his grave to protest against it. At this point, the chief justice raised his hand gently, and said: "Never mind, Mrs. Lockwood, never mind; he won't get out."

It is not, however, for his strong language in speech, or his anecdotes from the bench, that Chief Justice Cartter should be best remembered. It is rather for his love of justice, as expressed in many of his opinions, his strong common sense, his fearlessness in the discharge of duty, and his efforts to preserve individual liberty.

Among the more important cases heard by him was that of Hallet Kilbourn. Mr. Kilbourn had been summoned before a special committee of the House of Representatives in March, 1876, as a witness, and declined to answer certain questions asked him concerning certain real estate transactions in which it was thought Jay Cooke & Co. had been involved, and also declined to produce certain private papers called for. He was then brought before the House, where he again declined to answer the questions or to produce the papers called for, when he was adjudged to be in contempt and was arrested by the sergeant-at-arms by direction of the House of Representatives and imprisoned in the jail of this District.

After Mr. Kilbourn had refused to answer questions and to produce papers before the committee the Speaker, under the provisions of sections 102, 103, and 104 of the Revised Statutes of the United States, had certified the fact to the District Attorney, who was then Henry H. Wells, and an indictment had been found against him, which was

pending in this court, being No. 11,290 on the criminal docket.

Being confined in jail by the sergeant-at-arms, and awaiting trial on the indictment for the same offense, that of refusing to answer questions or produce papers, Kilbourn filed a petition, No. 11,314 on the criminal docket, for a writ of habeas corpus, and the same was issued by order of Chief Justice Cartter and made returnable before him in chambers.

The petitioner was represented by Jeremiah S. Black, Matt H. Carpenter, Walter D. Davidge, Noah L. Jeffries, Charles A. Eldredge, and Daniel W. Voorhees; and the sergeant-at-arms, or the House of Representatives, was represented by Col. Robert Christy and Samuel Shellabarger.

The arguments on both sides were very able, and lasted for several days. I was then an assistant in the office of the clerk of this court, and at the request of Chief Justice Cartter, who asked me to hear the case and give it my best consideration as a lawyer, I sat in the court room and took notes of the arguments, and prepared for him the statement of the case which appears in the record. He dictated the opinion to me, word for word, as he walked back and forth in the consultation room, and when written out it was annexed to the statement and all published as coming from him. He was not a man, however, to take the credit for something which he did not do, and a day or two afterward, I heard Judge Shellabarger say to him, that his statement of the case, in this opinion, was a better one than he could have made himself. Chief Justice Cartter promptly disclaimed any part in making the statement, saying that it was all my work. I considered this a great compliment, coming as it did from Judge Shellabarger whose ability in stating a case was one of the principal elements of his well-earned reputation as a distinguished lawyer.

In this case Chief Justice Cartter had to decide against the judgment of the House of Representatives, in ordering the petitioner to be confined in jail; or he had to pronounce unconstitutional or inoperative the statute which had been passed by both houses of Congress, and approved by the President, providing for the punishment for this character of contempt.

He reached the conclusion, in the able opinion pronounced by him, that the House was wrong in undertaking to punish for contempt contrary and in addition to, the method prescribed by the act of Congress; and he therefore ordered the discharge of the prisoner from the custody of the sergeant-at-arms, and the United States jail, and remanded him to the criminal court for trial.

I think the case was never tried, but Kilbourn brought suit against the sergeant-at-arms, for damages for false arrest, being suit No. 16,288 at law.

To this suit the sergeant-at-arms, the Speaker of the House of Representatives, and John M. Glover, and other members of the special committee, were made defendants.

The sergeant-at-arms justified his action under the Speaker's warrant. The other defendants pleaded the general issue, and justification in special pleas. Kilbourn demurred to the special pleas, which demurrer was overruled, and judgment entered for the defendants; and a writ of error was sued out to the Supreme Court of the

United States. The case was heard in that court, and the judgment of the Supreme Court of the District of Columbia was sustained as to the Speaker, and other members of the House of Representatives, but was reversed as to Thompson, the sergeant-at-arms; and the speaker's warrant was held to be no defense to the action. *Kilbourn v. Thompson*, 103 U. S., 168.

The case then came on for trial in the Supreme Court of the District of Columbia, and the jury found a verdict for the plaintiff, assessing his damages at \$100,000. The court on motion set this verdict aside because of excessive damages. The plaintiff then amended his declaration and averred special damages.

The case was tried a second time before Mr. Justice Cox, when the jury returned a verdict for the plaintiff for \$60,000, and that verdict was also set aside on the ground of excessive damages.

The case was again tried and a verdict rendered for \$37,500. A remittitur was ordered to be entered of \$17,500 or stand a further new trial. The remittitur was entered and the \$20,000 remaining was paid. See *Kilbourn v. Thompson*, *MacArthur & Mackey*, 401.

During the twenty-four years that Chief Justice Carter presided in this court there were, beside the three associate justices appointed with him, seven other associate justices, namely, Justice David C. Humphreys, appointed May 13, 1870, as successor to Justice Fisher, resigned; Justice Arthur MacArthur, appointed July 15, 1870; Justice Alexander B. Hagner, appointed January 21, 1879, to succeed Justice Olin, retired; Justice Walter S. Cox, appointed March 1, 1879; Justice Charles P. James, appointed July 24, 1879, as successor to Justice Humphreys, deceased; Justice Wm. M. Merrick, appointed May 1, 1885, as successor to Justice Wylie, retired; and Justice Martin V. Montgomery, appointed April 1, 1887, as successor to Justice MacArthur, retired.

During these twenty-four years, through the joint efforts of the bench and bar, printed reports of many of the decisions of this court were secured. The attorneys organized the Law Reporter Company, and Justice MacArthur, as a work of love, started the reports, they being, as a rule, first published in *THE LAW REPORTER* and then in book form in the *MacArthur*, the *MacArthur & Mackey*, and *Mackey's Reports*.

Previous to the first *MacArthur*, which was published in 1875, there had been no reports of the opinions of the courts of this District since those of Judge Cranch were brought to a close in 1840, a period of thirty-five years.

If I may be pardoned for another personal remark, I will say that I had some small part in the history of this resumption of the reports. I was an assistant clerk in the court from June, 1873, to June, 1876, and wrote shorthand; and I was frequently called upon by the judges to report their oral opinions delivered in general term, and I assisted Justice MacArthur in getting together many of those which he published in the first volume. In the preface to this volume Justice MacArthur thanks the members of the bar and the clerks for their assistance, and then does me the honor to add: "My thanks are especially due to Mr. Barnard for numerous transcriptions of his shorthand notes of oral opinions."

Of all the officers connected with the court, when it was first organized, none remain except

Mr. Return J. Meigs, Jr., who was with his father as assistant clerk from the beginning, and is still in the office. Of the members of the bar then, only three remain in practice at this time, Wm. F. Mattingly, who is now the president of the Bar Association, Nathaniel Wilson, and Eugene Carusi. Two others are still living, R. T. Morsell and Samuel L. Phillips, but they retired from practice some years ago.

During these twenty-four years the court witnessed three bloodless revolutions in the government of this District, and the futile efforts of Logan U. Reavis to have the capital removed to St. Louis. It saw the last mayor and common council and witnessed the abolition of the city governments of Washington and Georgetown and of the levy court; it saw the experiment of voting for a delegate in Congress and members of the District legislature, and the administration of two governors, and it saw the beginning of the government by Commissioners. It heard the city groan under the weight of its own inertia, and then saw it spring forward toward its present beauty, and wealth, and comfort under the herculean energies of Governor Shepherd and his co-workers.

It saw the excitement and sorrow attending the assassination of two Presidents—Lincoln and Garfield; and one of its members, Justice Cox, tried the assassin, Guiteau, and he was executed under the warrant of the court.

During this time the Bar Association of this District was organized and the accumulation of its valuable library was begun. In this time, too, the court, through the efforts of Chief Justice Carter, secured the appropriation and had the addition or new part built to the courthouse, which is now the north half of the building.

During these twenty-four years the Supreme Court of the District of Columbia did much to advance the cause of good order and good government, not only for this District, with its steadily increasing population, but for the nation at large.

Its broad jurisdiction and its location at the nation's capital, brought before its judges many important causes, such as could not have arisen in other courts, either State or Federal. It was clothed with all the common law powers of the State courts, and all the statutory powers of the United States circuit and district courts.

On the death of Chief Justice Carter, a meeting of the bench and bar was called, at which Mr. Justice Wylie presided, and at which resolutions were adopted, expressing the esteem in which he was held. These will be found in volume 15 of *The Washington Law Reporter*, 245-247. In the same place will also be found a record of the announcement of his death by Mr. Worthington, then United States District Attorney, in the court in general term; and the remarks of Mr. Justice Hagner at that time, from which I quote a few sentences; and they seem appropriate in closing this sketch, as Justice Hagner is the only survivor of the ten associate justices who sat upon the bench with Chief Justice Carter.

Justice Hagner said of him, among other things, that "he possessed a mind of great breadth and vigor, and of rare acuteness; with a faculty of perceiving with rapidity and clearness those points in a cause which he considered decisive of the real questions involved. His opinions, which were always pronounced extemporaneously, were couched in language peculiarly char-

acteristic of the qualities of his mind and disposition, original in style, frequently sententious and epigrammatic, always striking, sometimes abounding in quaint humor; there was rarely absent from his deliverances some sentence or expression that would fix itself upon the attention and be carried away in the memory of those who listened. And whatever he said was delivered in a voice and with a manner so animated and impressive that communicated an interest to discussions that might have otherwise been dull and unattractive. Nature had bestowed upon him a massive form and striking physiognomy, a highly expressive countenance, and an aspect intelligent, almost leonine, in its strength.

It is with Chief Justice Cartter in his sphere as a member of this court that we may appropriately speak of him. There were other relations in which, as a public man, the country at large knew him well. As a lawyer long in full practice, as a legislator in the halls of Congress, as holding a high diplomatic position, and as the associate of prominent men in trying times, he filled a conspicuous place in the history of his time. He will long be remembered in this community, where he lived so long, and especially by the members of the bar, who knew him so well, and could best appreciate his mental endowments and his great natural gifts."

### Supreme Court of the District of Columbia.

CHARLES H. MERRILLAT ET AL., TRUSTEES, COMPLAINANTS,

v.

MELLEN C. HOOKER ET AL., DEFENDANTS.

#### EVIDENCE; IMPEACHING WITNESS; ESTOPPEL.

Where in a suit to set aside a deed of trust as fraudulent, the plaintiffs called as witnesses the two defendants, who had actual knowledge of the precise character of the transaction, they thereby vouched for the competency and credibility of the defendants, and were estopped to assail their statements for the lack of either of these qualities, although plaintiffs in such a case are at liberty to show by other witnesses that defendants were mistaken.

Equity No. 36,339. Decided December, 1907.

HEARING on a bill in equity to set aside a deed of trust as in fraud of creditors. Bill dismissed.

Mr. MASON N. RICHARDSON and Mr. CHARLES H. MERRILLAT for the complainants.

Messrs. LESTER & PRICE and Messrs. BARNARD & JOHNSON for the defendants.

Mr. Justice GOULD delivered the opinion of the Court:

This is a creditor's bill seeking to set aside as fraudulent a certain deed of trust dated June 1, 1903, wherein the judgment debtor, Mellen C. Hooker, conveyed certain premises in this District to secure payment to defendant Brown of a note for \$1,800, and to the defendant, Gordon P. Hooker, a note for \$1,000, each note being payable five years after date. The bill avers that the notes were without any consideration, or without the consideration named, and that in so far as there was any consideration, the same has been satisfied.

The two defendants, the Hookers, and the defendant Brown filed answers under oath alleging

the bona fides of the two notes, the defendant Brown admitting that the note held by her had been curtailed so that a balance of \$850 only was due thereon.

It appears from the record, and was also stated in argument to the court that the plaintiffs have abandoned their claim as to the note held by Mrs. Brown. In order to establish their contention in regard to the thousand dollar note held by Gordon P. Hooker, the plaintiffs offered the testimony of the two defendants, the Hookers. They are father and son. They stated under oath substantially as follows: On the eleventh of May, 1899, Gordon P. Hooker enlisted in the Navy as an electrician at a salary of \$60 per month. Before he joined his ship his father suggested to him that he should send him through the Navy Department \$20 per month out of his salary which the father would hold for him and pay him ten per cent interest thereon. This was done by the father to encourage in the son the habit of saving. The son was discharged from the Navy May 12, 1903. During his enlistment the total amount received by the father through these allotments was \$950. When the son came home, it appeared the father was, to use the expression of the son, "kind of short" and the son accepted the note for a \$1,000 in controversy as representing the sums he had entrusted to his father, the \$50 above the amount which had actually been received being added to represent the interest. There were offered in evidence a number of these "allotments" for \$25 each from the U. S. Navy pay office, and from the testimony it does not admit of question that the father actually received the aforesaid sum of \$950 from his son's salary through the Navy pay office. It may be added that the Hookers differed in no material particular as to the circumstances attending the \$25 payments and to giving the \$1,000 note in settlement therefor.

The only other testimony offered by the complainants to establish the fraudulent character of this transaction, was of another transaction wherein the senior Hooker, the judgment debtor, conveyed certain property to one Kline for the purpose of hindering and delaying the collection of the judgment debt and also the action on the part of the senior Hooker in making out certain notes, one for \$25 dollars, and seventeen for \$50 each, bearing date March 1, 1900, and every two months thereafter until January 1, 1902, payable to the order of Gordon P. Hooker three years after the date of each. These notes while bearing different dates were all drawn at the same time, were never delivered to the payee, and were found in the safe of Hooker, senior, upon the levying of an execution. Hooker, senior, swears that they were made out as memoranda and that he supposed they had been destroyed. Testimony was also offered by plaintiff tending to show that the senior Hooker at the time the deed of trust was given to secure his son had reason to anticipate that he might be called upon to answer a large demand growing out of transactions in regard to what was called the Ledroit Park Syndicate.

Upon this record are the plaintiffs entitled to a decree declaring the thousand dollar note fraudulent and void? I do not think so. The case comes clearly within the rule laid down in *Clark v. Krause*, 2 Mackey, 559. Having called the two defendants who had actual knowledge of the pre-



cise character of the transaction, they thereby vouched for their competency and credibility and were estopped to assail their statements for the lack of either of these qualities, although they were at liberty to call other witnesses who might show that the defendants were mistaken in their statements. This they did not do. The circumstantial testimony which was adduced by complainants for the purpose of raising an inference of fraud went rather to the purpose of impeaching the statement of the senior Hooker, and this, as is well understood, they could not do. It is not possible that either of the defendants Hooker could be mistaken as to the transaction in question. They knew whether it was bona fide or not.

The rule which I have just stated as applicable to the case is also laid down by the Supreme Court of the United States in *Dravo v. Fabel*, 132 U. S., 487, as follows: "While the plaintiffs were not concluded by their evidence," i. e., the evidence of defendants, "and might have shown they were mistaken, it could not be properly contended by the plaintiffs that they were unworthy of credit."

I will sign a decree dismissing the bill.

#### **Drunkenness and Negligence.**

[New York Law Journal.]

The rule is generally recognized that voluntary intoxication is not an excuse for crime or an exonerating factor from liability for tort. Drunkenness may, however, be a factor to be taken into consideration in the treatment to be accorded by other persons. Thus, in *Doherty v. California Navigation, &c., Co.* (91 Pac., 419), in the Court of Appeal of California, it was held that where the captain of a steamship discovered a passenger lying in a drunken and helpless condition on the floor and, with knowledge of his helplessness, lifted him to his feet and left him without any support, whereupon he fell and broke his arm, the captain did not exercise the full degree of care required by rendering assistance sufficient in the case of a sober man, but was bound to exercise such care as he could to avoid an accident in the situation presented to him. The court said, in part:

"For an injury resulting from prior or concurrent negligence contributed he could not recover, but if the defendants, with knowledge of the plaintiff's danger, in the performance of the duty owed by them could have prevented the injury they were bound to do so, and their breach of duty would be the legal cause of the injury, unless at the time of the injury the plaintiff by the exercise of due care could have avoided it. If the plaintiff could not have prevented the injury to himself, and the defendants could by the care the situation required of them, they are liable if they did not, although the plaintiff's inability resulted from his prior negligence or intoxication."

In *Rollestone v. T. Cassirer & Co.*, in the Court of Appeals of Georgia (59 S. E., 442), the bearing of drunkenness upon another person's liability for negligence was elaborately discussed. It appeared that the proprietor of a barroom had therein a heavy bar counter, which was so constructed that it was topheavy on the outer edge, and was therefore in a state of unstable equilibrium and liable to topple as a result of any slight contact, and which ordinarily was securely fast-

ened to the floor, but which on the occasion in question was unfastened. A drunken man entered the saloon and, approaching the counter, stumbled, and to catch or steady himself took hold of and pulled against the counter, which he supposed to be fastened, as usual, but which fell upon him and killed him. It was held that the negligence of the defendant and the contributory negligence of the deceased were both questions for the jury, and that the court improperly sustained a general demurrer.

The reasoning is very elaborate. It is laid down that a drunken man entering a barroom may not have the status of a customer, because it will not be presumed that the proprietor or his agent intended to violate the law by selling liquor to an intoxicated person. The court proceeds, however, to show that any member of the general public entering a barroom may be considered as a licensee and then follows certain argument, which is summed up in the following extract from the official syllabus:

"The owner or proprietor of the premises is not free from duty to a licensee. He must keep the premises free from pitfalls, mantraps and the like.

(a) The exact duty owing by the proprietor to the licensee is a matter determinable only by the specific circumstances of each case.

(b) If the proprietor knows that a pitfall or some similar secret danger lurks in his premises, and sees a licensee about to come into contact therewith, he should give warning.

(c) The duty of warning against such danger becomes the more imperative when the licensee has bad eyesight, is intoxicated, or is suffering from other infirmity known to the proprietor.

(d) Heavy articles which are apparently in stable equilibrium, or which appear to be securely fastened, but which in fact are unstable equilibrium and not fastened, may fairly be placed in the same category with pitfalls and mantraps."

Further, the court lays down these propositions (official syllabus):

"In viewing the conduct of a drunken man for the purpose of determining his negligence or contributory negligence the state of mind produced by intoxication will be disregarded, and he will be judged as if the conduct were committed by him while in possession of his normal mental capacity. His physical state, though caused by drunkenness, is, however, a condition that enters in as one of the circumstances in judging the negligence of the respective parties to the transaction. In determining the negligence of a defendant for injuries received by a drunken man, both the mental and the physical condition of the latter, so far as it was known or reasonably ought to have been known to the former, are legitimate matters for consideration."

Toward the close of the opinion the court remarks:

"In determining the negligence of the defendant the circumstance that the deceased was drunk, and his condition, mental and physical, so far as disclosed to the defendant, or so far as under the circumstances the defendant reasonably should have known, are to be considered. As to the conduct of the deceased, his drunkenness is no excuse for any failure on his part to use all the judgment, knowledge, care, and discretion which would have been required of him if he were sober. As a

part of this sober man's knowledge which he was called upon to exercise was a realization of the fact that he was drunk (this is not a bull, but a legal nicety), and that, being drunk, his physical and mental powers and faculties were impaired. It was his duty to conduct himself while in the saloon just as a sober man would have done if he had been in that physical condition as the result of illness or other innocent cause. If his stumbling was caused by physical weakness, though drunken weakness, and not from drunken misjudgment or drunken lack of care, and, having stumbled, he acted as a reasonably prudent sober man in his physical condition would have acted, the fact of his intoxication will not make him guilty of contributory negligence. We can not say, as a matter of law, that it was not natural, prudent, and reasonable to be anticipated that one who had casually stumbled, fallen, or otherwise come into contact with a bar counter should lean against, catch hold of it, or pull up by it. We have heard that one reason why bar counters are made in the style they are said to be made is that customers in places where such counters are found frequently feel a desire to lean against, catch hold of, or pull up by something and the bar counter is so made as to accommodate them in these particulars, as well as in others."

Whatever may be thought of this reasoning as a whole, the last sentence quoted has more than a jocose suggestion. Intoxication is a matter of progressive degrees, and a person's powers of observation and self-protection may be somewhat affected before the external symptoms become such as would render the further sale of liquor to him an offense against the law. Moreover, drunken persons naturally gravitate towards bar-rooms, where their status is that of licensees, if not customers. It is not, therefore, illegitimate to attach a special phase of the "pitfall" or "man-trap" principle to such places, and hold that where unstable personal equilibrium is expected and invited there is a peculiar duty of maintaining the equilibrium of the leaning facilities in impeccable stability.

#### Tortious Liability for Breach of Fiduciary Faithfulness.

[New York Law Journal.]

In *Acker, Merrill & Condit Company v. McGaw* (68 Atl., 17) the Court of Appeals of Maryland repeats the abstract characterization of tort:

"A person commits a tort, and renders himself liable to an action for damages, who commits some act not authorized by law, or who omits to do something which he ought to do by law, and by such an act or omission either infringes some absolute right to the uninterrupted enjoyment of which another is entitled or causes to such other some substantial loss of money, health or material comfort beyond that suffered by the rest of the public."

It was accordingly decided that if a managing directory of a grocery company secured in his own name a renewal of the company's lease on premises used in the business, to go into business for himself, when he could have secured the renewal for the company at the same rental, his failure to do so was a breach of duty, for which he is liable, or if he aided and abetted others to obtain a lease, or authorized them to make an

offer whereby the company suffered a loss, he is liable. It was held that as the principal had been obliged through the agent's action to pay an increased rental for the premises there was sufficient to go to the jury on the question of the plaintiff's damage.

Actions are not uncommon to compel a co-partner, or other person occupying a trust relation, to assign to, or hold for the benefit of, the firm, or other persons entitled to the benefit of the confidence, a lease, or other property, acquired in the fiduciary's own name. In the present case, indeed, the managing director transferred the renewal lease to the company. Through said director's complicity with third persons, however, the company was obliged to agree to pay an advanced rent in order to procure the consent of the lessors to the assignment, and the purport of the reasoning is that such managing director would be liable in an action of tort for the damage thereby sustained. The court said, in part:

"It is therefore, clear that, if the defendant secured the lease in his own name, under the circumstances mentioned, when he could have secured it for the company at the same rental, his failure to do so was a breach of duty, and if loss thereby resulted to the plaintiff he is liable, or if, while a director of the company, he aided and abetted Hopper and Warden to obtain a lease of the premises, or if he authorized them to make the offer mentioned in the evidence whereby loss accrued to the plaintiff, he is liable. That he did, while a director of the company, take the lease in his own name is not denied. That he could have secured it for the same rental for his company might have been reasonably inferred from his relation to the trustee, from his own declaration, and from the testimony of Mr. Willis, one of the trustees (the lessors). Neither is it denied that he was ready to become responsible for the rent of \$9,000 per year in case the offer of Warden and Hopper was accepted. And the testimony of Mr. Willis, a portion of which we have quoted, tends to show that the plaintiff was compelled to pay an additional or advanced rent for the property in consequence of that offer. Was this offer of Hopper and Warden made for and on behalf of Mr. McGaw? He had determined to go into the grocery business, had offered to buy the plaintiff's business. He wanted the premises in which to conduct that business, had secured the lease in his own name on the premises then occupied by the company, and had been forced to assign the same to the plaintiff. He had talked to Hopper and Warden about his plan. Warden was his brother-in-law, and both had been employed by the defendant in the plaintiff's store, and the three had been dismissed from its employment shortly before the offer was made. Warden expected to go with Mr. McGaw when he opened his new business, and Hopper did become of the firm of Hopper, McGaw & Co., which was formed on the 1st of February, 1906. What conclusions would men familiar with the practical affairs of life draw from such facts? Would an experienced man pledge his financial responsibility to start a rival to his own? Could it not be well argued from the facts disclosed from this record, in the absence of all testimony to the contrary, that this offer was really made in behalf of the defendant, and might not a jury have so found? We think they might reasonably have so con-



cluded. We are of opinion that, apart from the the excluded testimony, there was evidence legally sufficient to have taken the case to a jury, and for error committed in granting the defendant's prayer the judgment must be reversed."

**Bills and Notes—Defenses.**—Where a joint and several note, purporting to have been signed by several persons, comes before maturity into the hands of a bona fide holder, the fact that some of the signatures are forged does not affect the liability of the signers whose signatures are genuine. *First Nat. Bank v. Shaw*, (Mich.), 112 N. W. Rep., 904.

**Bills and Notes—Measure of Liability.**—An accommodation indorser of a raised check held liable to a bank paying the same for the difference between the amount of the check as originally drawn and the amount to which it was raised. *Smith v. State Bank*, 104 N. Y. Supp., 750.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

##### Annual Report of the Law Reporter Printing Company, of Washington, D. C.

In compliance with section 617, Code, District of Columbia, we, the undersigned, a majority of the board of trustees of The Law Reporter Printing Company, of Washington, D. C., do hereby certify that the capital stock of the said corporation is \$18,000, all of which has been paid in, and that there are no existing debts. M. W. MOORE, Vice-President and Acting President; RALPH P. BARNARD, H. RANDALL WEBB, CHAPIN BROWN, EDWARD H. THOMAS, A. A. BIRNEY, Trustees.

Subscribed and sworn to by M. W. Moore, Vice-President and Acting President, before me, a notary public in and for the District of Columbia, this 15th day of January, 1908. ALBERT HARPER, Notary Public, D. C. 3-8t

##### Fourth Annual Report of the Pueblo Mining Co.

We, the undersigned, president and a majority of the trustees of the above-named company, make this our fourth annual report, under and in pursuance of the provisions of section 617 of the Code of Law for the District of Columbia, under which law the said company was incorporated. The amount of capital of said company is \$3,000,000, consisting of 3,000,000 shares of the par value of \$1.00 each. The number of shares issued, 2,575,008. The amount of existing debts, \$1,000, including current expenses. Witness our hands this 11th day of January, A. D. 1908. CHARLES T. MCCOY, President; CHARLES T. MCCOY, JOHN T. MCCOY, W. H. ROHRER, M. H. RAMAGE, JNO. E. STONE, Trustees. City of Washington, District of Columbia, ss:

Charles T. McCoy, being first duly sworn according to law, deposes and says: That he is president of the above-named corporation; that he has read the foregoing, its fourth annual report, and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief. CHARLES T. MCCOY.

Subscribed and sworn to before me this 11th day of January, A. D. 1908. JENNIE M. SHEPHERD, Notary Public, District of Columbia. My commission expires June 23, 1911. [Seal.] 3-8t

### Legal Notices.

We, the undersigned, president and a majority of the board of trustees of the U. S. Bindery & Paper Goods Company, of Washington City, do hereby certify that the capital stock of said corporation is \$25,000; that stock to the amount of \$6,470 has been issued and paid in full; that there remains in the treasury \$18,630, and that the existing debts are \$3,181.08. M. W. MOORE, Pres.; O. E. NEWTON, Trustee.

Subscribed and sworn to before me, notary public in and for the District of Columbia, by M. N. Moore, president U. S. Bindery & Paper Goods Company, this 17th day of January, 1908. ALFRED D. SMITH, Notary Public, D. C. [Seal.] 3-1t

##### Irving Williamson, Attorney

##### Supreme Court of the District of Columbia,

##### Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Zera Luther Tanner, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 5th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of January, 1908. HELEN B. TANNER, Executrix, by Irving Williamson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,118. Administration. [Seal.] 3-8t

##### F. H. Stephens, Attorney

##### Supreme Court of the District of Columbia,

##### Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret F. Buckelew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. HENRY COTHEAEE EVANS, 918 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,793. Administration. [Seal.] 3-8t

##### Wm. L. Pollard, Attorney

##### Supreme Court of the District of Columbia,

##### Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Fletcher, late of the District of Columbia, deceased. All persons having claims against the deceased, are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. FRANKLIN I. A. BENNETT, 1214 Linden st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,655. Administration. [Seal.] 3-8t

##### Fred B. Rhodes, Attorney

##### Supreme Court of the District of Columbia,

##### Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Julia S. Marks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. SAMUEL H. MARKS, 149 You st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,933. Administration. [Seal.] 3-8t

## Legal Notices.

Jas. A. Burkart, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Eldridge J. Smith, Deceased.

No. 13,718. Administration Docket. — Application having been made herein for letters of administration c. t. a. d. b. n. on said estate, by Wilbur L. Wright, it is ordered this 14th day of January, A. D. 1908, that Andrew C. Smith, Theodore C. Smith, Fanny Roscovitch, Nora Smith, Frederick Smith, and Henry Smith, all of Takoma, Wash.; Mary Burns, Homer, Minn.; and Maud Hayes, of Lewisburg, Pa., and all others concerned, appear in said court on Wednesday, the 19th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-31

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cullam Wyatt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. WILLIAM L. POLLARD 609 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,120. Administration. [Seal.] 8-31

E. H. Thomas and A. B. Duvall, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re Opening an Alley in Square 807, in the District of Columbia. District Court No. 761.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 16 8 et seq., of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for opening an alley in square 807 in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying, also, that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States Marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of said alley, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 16th day of January, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 5th day of February, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 5th day of February, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States Marshal or his deputies upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 5th day of February, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-31

## Legal Notices.

Geo. Francis Williams, Solicitor

In the Supreme Court of the District of Columbia.  
William H. McCray, Complainant, v. John R. Tucker et als., Defendants. Equity No. 27,588.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to lots twenty (20), twenty-one (21), and twenty-two (22), in Henry A. Willard's recorded subdivision of square one hundred and fifty-one (151), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 17th day of January, 1908, ordered that the defendants, John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred D. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Tallaferra, Julia Clark Tucker, Nathaniel Beverly Tucker, William F. P. Tucker, John R. Bryan, Della Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Perronneam Brown, Virginia C. Braxton, St. George Tucker, Coalter, Ellis Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the defendants, the unknown heirs, devisees, or assignees of such of the above-named defendants that are dead, and the unknown heirs, devisees, or assignees of Thomas Tudor Tucker, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in five successive weeks prior to said return day [Seal.] In The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-31

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.  
Frances W. Irelan v. Harriet L. Kendall et al.

No. 27,438. Equity.

The object of this suit is to sell for partition all the property of which the late George H. B. White died seized, namely: Lot 7, subdivision of square 144; lot 20, square 250; lot 9, block 39, subdivision north grounds of Columbia University; lot 3, block 7, Cleveland Heights; lots 29 and 30, block 4; lots 4, 5, and 6, block 6; lots 13 and 14, block 12; lots 6 and 7, block 13, subdivision of part of "Trinidad;" undivided half interest in west 25.90 feet of lot 3, square 85; undivided twentieth interest in parts of "Lucky Discovery" and "Pretty Prospect," described in deed recorded in Liber 1474, folio 194, of the land records of the District of Columbia, all being in the District of Columbia. On motion of the plaintiff, it is this 16th day of January, A. D. 1908, ordered that the defendant, Harriet L. Kendall, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-31

Justice blanks of every description for sale at the office.

**Legal Notices.**

Gittings &amp; Chamberlain, Solicitors

In the Supreme Court of the District of Columbia.  
William Wheeler Smith, Complainant, v. Amzi L. Barber et al., Defendants. Equity, 27,500. Docket 60.

The object of this suit is to annul a certain deed, as to the complainant in this cause, from Amzi L. Barber, et ux, to John J. Albright, dated July 17, 1908, and recorded March 14, 1907, in liber 3068, at folio 61 et seq. of the land records of the District of Columbia, conveying lots 3, 4 and 5 in block 29 of John Sherman's trustees' subdivision of Columbia Heights, and, after the sale of said property pursuant to the terms of a decree passed in Equity No. 26,951, to empower and direct the trustees appointed therein to apply balance of proceeds to the satisfaction of certain other judgments obtained by the complainant against the defendant, Amzi L. Barber. It appearing to the court that the summons issued herein against the defendant, John J. Albright has been returned "not to be found," and the non-residence of the said defendant having been proved by affidavit to the satisfaction of the court, on motion of the complainant, it is, this 8th day of January, 1909, ordered that the defendant, John J. Albright, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

Law Reporter and The Washington Post.  
[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. E. Young, Clerk, by J. A. C. Palmer Asst. Clerk. 3-St

J. J. Darlington, Attorney

In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.

In the Matter of the Estate of Claas Denekas, Deceased. No. 13,406. Admn. Doc. —.

Gustav H. Schulze and Ernest A. Sellhausen, executors, having reported a sale to James S. Fraser for \$1,100 in cash, of a part of the Villa Flora property owned by the above-named Claas Denekas, in the District of Columbia, known as a part of the tract of land called "The Girl's Portion," and more particularly described in the report of the said executors filed in the above entitled cause, the land so reported sold comprising about five hundred and ninety-five thousandths (.595) of an acre, more or less, it is by the court this 7th day of January, A. D. 1908, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of February, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said day in The Wash-

ington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 3-St

E. L. White, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Hiland, late of the District of Columbia deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of January, 1908. FRANK FREMONT SMITH, 1808 Mass. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,920. Administration. [Seal.] 3-St

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza T. Ward, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the 13th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. MINNIE CHAPIN, Herndon, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,848. Administration. [Seal.] 3-St

**Legal Notices.**

SECOND INSERTION.

Clarence R. Wilson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maud T. Porter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1908. MARIE E. ROELKER, 1434 Q. st. N. W., Wash., D. C.; CARL J. ROELKER, State Bank Bldg., Richmond, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,879. Administration. [Seal.] 2-St

F. H. Stephens, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ferdinand Schroeder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,822. Administration. [Seal.] 2-St

F. H. Stephens, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Watson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,821. Administration. [Seal.] 2-St

Chapin Brown and Wm. A. McKenney, Attorneys  
Supreme Court of the District of Columbia,

Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. Whittemore, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of January, 1908. CHAPIN BROWN, 323 John Marshall Place; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,946. Administration. [Seal.] 2-St

F. H. Stephens, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Nelson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,826. Administration. [Seal.] 2-St

**Legal Notices.**

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,824. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Cairns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,823. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John J. Mountney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,825. Administration. [Seal.] 2-3t

**Carlisle & Johnson, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**David Paul Burleigh Conkling, Complainant, v. New York Life Insurance and Trust Company et al., Defendants. No. 27,483. In Equity.**

The object of this suit is to secure a conveyance in fee simple to the complainant, David Paul Burleigh Conkling, of the real estate situated in the city of Washington, District of Columbia, known and designated in the records of the surveyor's office of the District of Columbia, in liber 27 at folio 175, as lot numbered one hundred and thirty-nine (139) in Sarah B. Conkling's subdivision of lots numbered sixty-two (62) and sixty-three (63) of A. P. Fardon's subdivision of lots in square numbered one hundred and thirty-four (134) which the complainant in his bill claims that Sarah B. Conkling agreed to convey to him and the consideration for which conveyance the complainant claims to have paid to said Sarah B. Conkling in her lifetime. On motion of the complainant, it is this 10th day of January, A. D. 1908, ordered that the defendants, Della Mason Caldwell, Sarah B. C. Moller, Natalie Alberta Caldwell, James Caldwell, Natalie Burleigh von Ohnesorge, Paulina Feodora von Ohnesorge, Lebrecht Leopold von Ohnesorge, and Nathaniel Conkling, and every of them, do cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

**Legal Notices.**

**John B. Dalsh, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Hellman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of January, 1908. MAE HELLMAN, 210 K St. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,844. Administration. [Seal.] 2-3t

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Holtzman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of January, 1908. WILLOUGHBY S. CHESLEY, Bond Building, Wash., D. C.; CHARLES W. HENDLEY, 901-2 Continental Bldg., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,891. Administration. [Seal.] 2-3t

**Jas. L. Neill, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Raquel Cruz Carter v. Heyward S. Carter.**

No. 27,531. Equity Docket No.—  
 The object of this suit is to obtain absolute divorce on ground of adultery. On motion of the complainant, it is this 3d day of January, 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Law Reporter and Washington [Seal] Bee once a week for three successive weeks. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-3t

**George E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert B. Donaldson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of January, 1908. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,902. Administration. [Seal.] 2-3t

**Thomas Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel Jordan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of January, 1908. JOHN W. BRANSON, 832 3d St. S. W.; ALEXANDER S. HOWARD, 624 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,889. Administration. [Seal.] 2-3t

**Legal Notices.****G. P. Montague, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Bogislav Zglinitzki, Deceased.****No. 14,885. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Wanda A. Buell, the executrix named in said will, it is ordered, this 8d day of January, A. D. 1908, that—Zglinitzki (address unknown) and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Friday, the 14th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.**Attest: **James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 2-St**J. A. Maedel, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Peter Schweitzer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of January, 1908. **THEODORE FLITT, 523 Q. st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,800. Administration. [Seal.] 2-St

**A. E. Shoemaker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lydia G. Conkling, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1909. **LYDIA G. LEWIS, 3025 Kalorama Road.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,757. Administration. [Seal.] 2-St

**W. Gwynn Gardiner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Joseph D. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **ERNEST P. JONES, 235 Pa. ave N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,933. Administration. [Seal.] 2-St

**Carlisle & Johnson, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie H. Wise, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. **WM. C. WISE, 1014 17th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,915. Administration. [Seal.] 2-St

**Legal Notices.****Robinson White, Solicitor****In the Supreme Court of the District of Columbia,  
Holding a Special Term Thereof in Equity.  
Clara S. Gross, Complainant, v. Henry J. Gross et als.,  
Defendants. Equity, No. 27,490.**

The object of this suit is to obtain a divorce from the bond of marriage with the defendant on the ground of adultery. On motion of the complainant it is, this 2d day of January, A. D. 1908, ordered that the co-respondent, May Howard, cause her appearance to be entered therein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and Washington Times before said date. **ASHLEY**

[Seal] **M. GOULD, Justice.** A true copy. Test: **J. R. Young, Clerk, by Wms. F. Lemon,** 2-St  
**Asst. Clerk.****THIRD INSERTION.****Gus A. Schult, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Loense, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of December, 1907. **GUS A. SCHULT, Columbian Bldg.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,927. Administration. [Seal.] 1-St

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Henry C. Burch, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. **UNION TRUST COMPANY,** by **George E. Fleming, Secretary;** by **George E. Fleming, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,063. Administration. [Seal.] 1-St

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Elizabeth Strobel, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 20th day of January, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 27th day of December, 1907. **UNION TRUST COMPANY,** by **George E. Fleming, Secretary;** by **George E. Fleming, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,101. Admn. [Seal.] 1-St

Justice blanks of every description for sale at this office.

## Legal Notices.

C. Clinton James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Thomas Cissel, Deceased.  
No. 14,888. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Louise Cissel, it is ordered this 3d day of January, A. D. 1908, that Mary Cissel, William Cissel, Ethel Cissel, Paul Cissel, and Sheridan Cissel, infants, and all others concerned, appear in said court on Monday, the 3d day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

J. J. Waters, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Alfred Pope, Deceased.  
No. 14,862. Administration Docket, 37.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Hannah Pope, it is ordered this 3d day of January, A. D. 1908, that Alfred Hubert Thompson, and all others concerned, appear in said court on Friday, the 7th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

M. J. Keane, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Benjamin Smith, Deceased.  
No. 14,911. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Langley, it is ordered this 2d day of January, A. D. 1908, that the unknown heirs at law and next of kin of Benjamin Smith, and all others concerned, appear in said court on Tuesday, the 4th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 1-3t

C. H. Stanley and H. S. Matthews, Solicitors  
In the Supreme Court of the District of Columbia.  
Roger B. Berry, Complainant, v. Mary L. Berry et al., Defendants. No. 27,142. In Equity. Docket No.

Charles H. Stanley and Henry S. Matthews, trustees herein, having reported the sale of part of subdivision lot 21 in square 367 in the city of Washington, District of Columbia, being the north 37.100 feet thereof, and part of subdivision lot 23 in said square, being the south 12 and 31.100 feet thereof, being improved by dwelling known as No. 1815 10th street northwest, to Ella Simonds for the sum of \$2,000.00 cash, and all of subdivision lot numbered 4 in square 447 in said city and District, improved by dwelling known as No. 607 N street northwest, to Solomon Berliner for the sum of \$1,500.00 cash, it is, by the court, this 2d day of January, A. D. 1908, ordered that said trustees be, and they are hereby authorized to accept said offers, and upon compliance with the terms of said sales, said sales shall stand confirmed, unless cause to the contrary be shown on or before the 3d day of February, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star

[Seal] once a week for three successive weeks before the last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 1-3t

## Legal Notices.

## FOURTH INSERTION.

J. A. Butler and C. W. Stetson, Solicitors  
In the Supreme Court of the District of Columbia.  
Frederick S. Giehner v. The Unknown Heirs, Devisees, or Alienees of John Wilmore, Jr.  
Equity No. 27,469.

The object of this suit is to perfect the title of complainant to lots 46, 47, 48, and the west 10 feet 6 1/2 inches front by the depth of lot 49, in the recorded subdivision of square east of square 88, in the city of Washington, D. C., as said subdivision appears of record in the office of the surveyor of the District of Columbia, in book R. L. H. page 304. On motion of the complainant, it is this 9th day of December, 1907, ordered that the defendants, the unknown heirs, devisees, or alienees of John Wilmore, Junior, cause their appearance to be entered herein on or before the first rule day occurring two months after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published twice a month for two successive months prior to said return day in The Washington Law Reporter and The Washington Herald, sufficient cause having been shown to the satisfaction of the court for dispensing with a longer period of publication. HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. dec 18, 20; jan 10, 17

Alex. Muncaster, Gittings & Chamberlain, Solicitors  
In the Supreme Court of the District of Columbia.  
Andrew W. Kirk et al., Complainants, v. Alice C. De Vaughn et al., Defendants. Equity, No. 27,423.

The object of this suit is to partition the following described property according to the respective interests of the parties hereto and for a receiver and accounting, viz: All that portion of lot 21, square 378, beginning at the northeast corner of said lot; thence south along the west line of 9th street 19 feet 6 inches; thence west 63 feet 4.5 inches; thence north 19 feet 6 inches; thence east along the south line of E street to place of beginning. All those parts of lots 20 and 22, square 378, beginning at northeast corner of lot 22; thence south along the east line of 9th street 25.54 feet; thence west 110 feet; thence north 25.54 feet; thence east to beginning. All of lots 1 and 2, square 433. On motion of the complainants it is this 6th day of December, 1907, ordered that the defendants, Alice C. De Vaughn, Ida P. Spaulding, Frank De Vaughn Phillips, Ernest S. Bartlett, John H. De Vaughn, and the unknown heirs, alienees, and devisees of William F. De Vaughn, Jr., and Jane Davis, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and The Washington Post. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. dec 18-20; jan 10-17; feb 14-21

Philip Walker, Solicitor  
In the Supreme Court of the District of Columbia.  
Horace K. Fulton v. The Unknown Heirs, Devisees, and Alienees of Henry Burford and William O'Neale. In Equity, No. 27,443.

The object of this suit is to establish title in the complainant by adverse possession of lot 144 in Mary S. Milliken's subdivision of lot 49 in commissioners subdivision of original lot 17, in square 510, in the City of Washington, District of Columbia. On motion of the complainant it is, this 11th day of December, 1907, ordered that the defendants, the unknown heirs, devisees and alienees of Henry Burford and William O'Neale, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in The Washington Law Reporter and the Washington Post. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. dec 18, 20, 27; jan 17, 24; feb 14, 21.

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.



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WASHINGTON, D. C. - - - JANUARY 24, 1908

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### Absence of Attorney From Court as Contempt.

A ruling of special interest to attorneys was made by the St. Louis Court of Appeals in the recent case of *In re Clark*, 103 S. W. Rep., 1105. It was therein held that the absence of an attorney from the court in which he has business, and when he should be there to attend to it, and when his absence delays or impedes the business of the court, constitutes a contempt of court. An attorney at law is an officer of the court, and it is as much incumbent on him to attend the sittings of the court when a case in which he is of counsel is on trial, and which trial can not proceed in his absence, as it is for the clerk or other officers of the court to be present.

### Foreign Corporation—Power of State to Exclude or Condition Its Business.

In the case of *Butler Bros. Shoe Co. v. United States Rubber Co.*, recently decided by the United States Circuit Court of Appeals for the Eighth Circuit (156 Fed., 1), the court says that the broad statement in *Paul v. Virginia*, 8 Wall., 168, 181, that a State may exclude a foreign corporation from business, or may condition its admission to do business within its borders by such terms as it may deem proper, has been qualified by subsequent decisions of the Supreme Court. The following exceptions to it the court holds to be established:

(a) Every corporation empowered by the State of its creation to engage in interstate commerce may carry on that commerce in sound and recognized articles of commerce in every other State in

the Union. Every prohibition, obstruction, or burden which the other States attempt to impose upon such business is unconstitutional and void.

(b) Every corporation of every State which is in the employ of the United States, has the right to exercise the necessary corporate powers and to transact the requisite business to discharge the duties of that employment in every other State in the Union, without let or hindrance from the latter.

(c) Every corporation of every State has the absolute right to institute, maintain, and defend in the Federal courts, and to remove to those courts its suits in any other States in the cases and on the terms prescribed by the acts of Congress.

### Express Company—Limitation of Liability.

In *Addoms v. Weir*, decided by the appellate term of the Supreme Court of New York and reported in the *New York Law Journal*, it is held that where a package is entrusted by the owner to a messenger for delivery to an express company for transportation the messenger is constituted the agent of the owner for all purposes necessary to the shipment, and, as such, is authorized to enter into a special contract limiting the liability of the company in case of loss which is binding on the owner. In such case the company is justified in relying upon the apparent authority accompanying the lawful possession of the package, and, in the absence of some special circumstances calling for unusual care, is not obliged to examine into the authority of the person presenting the package to make a contract for limited liability. It was further held that where the plaintiff, the owner of an alleged lost package, introduces as part of her proof a receipt containing a special contract of limited liability, she is bound by the terms of such contract.

### Limitation of Actions—Commencement of Action—Amendment of Pleading.

In *Wise Terminal Company v. McCormick*, decided by the Supreme Court of Appeals of Virginia (58 S. E., 584), the court considers the effect of an amendment of the pleadings on a plea of the Statute of Limitations. It is held that where the cause and form of action are the same in both the original and the amended declarations in an action by a brakeman for injuries received in attempting to board the tender of an engine, the amended declaration will not be regarded as stating a new cause of action so as to bar a recovery, although made after the Statute of Limitations has run, merely because it charges the negligence complained of in varying forms to meet different phases of the evidence.



## Court of Appeals of the District of Columbia.

JANE O'DWYER, APPELLANT,

v.

NORTHERN MARKET COMPANY AND THE  
DISTRICT OF COLUMBIA.

NUISANCE; UNLAWFUL OCCUPATION OF SIDEWALK BY  
MARKET COMPANY; NEGLIGENCE; NOTICE; EVI-  
DENCE.

1. A market company which is responsible for the unlawful occupation by vendors of vegetables and fruits, from whom it exacts a rental, of the public sidewalk adjoining its market building, is guilty of maintaining a public nuisance, and is liable for any special damage naturally resulting therefrom regardless of the question of negligence.
2. Having, through these vegetable vendors, unlawfully occupied a portion of the sidewalk, it was *prima facie* liable for injuries occasioned by the refuse which those vendors, in the course of their business, permitted to litter such sidewalk.
3. In such case, instructions granted at the request of the market company, that the plaintiff, who was injured by slipping upon vegetable matter on the sidewalk, could recover only upon proof that the market company was negligent, held erroneous.
4. Where there is no evidence tending to show negligence on the part of the plaintiff, it is error to submit the question of her negligence to the jury.
5. When the evidence is conclusive that the District had knowledge, through its police officers, of the long-continued unlawful occupation of the sidewalks by hucksters under leases from the market company, and that such officers had driven away hucksters who refused to pay the market company for the privilege, the jury should be instructed that the District had notice of such unlawful occupation, and as matter of law was guilty of negligence in not suppressing the nuisance, and therefore equally responsible with the market company.
6. It was not necessary for the plaintiff to show that the District had knowledge of the presence on the sidewalk of the particular piece of vegetable matter causing injury to the plaintiff.
7. Under the circumstances of this case, it was not error for the trial court to permit defendants to introduce evidence as to the general condition of the sidewalk prior to the accident.

No. 1715. Decided January 8, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,215, entered upon a verdict for defendant in an action for personal injuries. Reversed.

MR. GEO. E. HAMILTON, MR. M. J. COLBERT, MR. ARTHUR PETER, MR. E. H. THOMAS, and MR. HENRY P. BLAIR for the appellants.

MR. CHAS. H. MERILLAT and MR. CHAS. F. CARUSI for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District on a verdict of a jury in favor of the defendants, the appellees here. The suit was brought by Jane O'Dwyer to recover damages for personal injuries alleged to have been sustained by slipping and falling on green vegetable or other refuse matter on the sidewalk on Seventh street between O and P streets N. W., which was thereon, as she contends, as the natural result of the improper and illegal use made of the sidewalk by the market company with the knowledge of the District.

The case was tried once before. At the former trial the defendants severally moved for a verdict at the close of the plaintiff's evidence on the ground that no cause of action had been made out against either of them. The motion was allowed, and a

verdict and judgment in accordance therewith followed. The case was then brought to this court, the result being the reversal of the judgment and the granting of a new trial. *O'Dwyer v. Northern Market Co.*, 24 App. D. C., 81: 32 Wash. Law Rep., 438.

The facts, as developed during the second trial, are briefly these: The market company is a private corporation, and for many years has owned a market building on Seventh street between O and P streets N. W., and has there conducted a market. In addition to the market building it owns all the adjacent property on that side of the street between O and P Streets, with the exception of two pieces. Included in its property there situated is a store in front of which the accident occurred, and which, prior to and at the time of this accident was leased by a Mrs. Cohen. The lease from the market company to Mrs. Cohen contained the following provision:

"It is understood and agreed that country traders and teams will be allowed to occupy the space in front of said store to the curb for displaying and selling goods and that the clerk of the market will be allowed to collect for same and shall see that the space is cleaned up after the persons and teams have left."

The plaintiff's evidence tended to show that the market company exercised control over all the sidewalk on 7th street between O and P streets, except that opposite the two pieces of property it did not own, and permitted country dealers and hucksters *who paid for the privilege* to occupy several feet of said sidewalk next the curb with the stands, barrels and trays from which they sold green vegetables and fruits. The refuse from the vegetables and fruits there sold by these hucksters was thrown upon the open or unoccupied part of the sidewalk and permitted to remain there until the close of the market day. The condition of the walk by reason of such occupancy had been bad for years but its condition was worse the summer of the accident. On the day of the accident the walk opposite the store occupied by Mrs. Cohen was strewn with vegetables, tomatoes and other refuse, and the attention of the market company had been specifically directed thereto about an hour prior to the accident.

The market master was called by the defendants, and admitted that he collected 15 cents from each huckster on Saturdays and 10 cents on other days, but claimed the charge was made for storing their stands on a vacant lot of the company. He then said, however, that "as he understood the law for many years it gave the market master the right to the whole sidewalk and fifteen feet of the street. On cross-examination he admitted that when the owner of one of the two pieces of property not controlled by said company 'had let some persons occupy the sidewalk in front of his store, but would not let witness collect from them and witness complained to the police and the police stopped the persons from standing there.'"

At the close of the testimony the plaintiff offered the following instructions which were granted without objection:

1. "The jury are instructed that if you find there was litter or refuse matter on the sidewalk at the place of the accident and that the littering of the sidewalk was the ordinary and usual result of the marketing business carried on there and

that the market company was a party to this conducting of the marketing business on the sidewalk that it was its duty to keep the sidewalk clean and safely passable at all times from obstructions with vegetable, fruit or refuse matter and if you find it failed in this duty and that the plaintiff was thereby injured then the market company must respond to the plaintiff in damages for her injuries. You are instructed that the market company could not restrict its diligence in keeping the sidewalk clean and free of vegetable or other matters to times after the market had closed but must keep the same clean and safely passable at all times. You are further instructed that the cellar door in front of the market company's stores is part of the sidewalk.

2. "The jury are instructed that the use of the public sidewalk on Seventh street for market purposes was illegal and constituted a nuisance, and if you find that the market company was a party to the use made of the public sidewalk and that the plaintiff as a result of use of the public sidewalk for market purposes was injured thereby, the market company is liable to the plaintiff in damages. In determining whether the market company was a party to the use made of the sidewalk for market purposes you may take into consideration all the evidence in the case, including the lease in evidence, the collection of money from market people, the cleaning of the sidewalk and streets after market hours, the use of the market property as a place for stands and boxes for hucksters and country people, and any and all other evidence in the case bearing upon this question.

3. "The jury are also instructed if they find that the District of Columbia with knowledge thereof permitted the use of the sidewalk on Seventh street for market purposes and knew or in the exercise of ordinary care and prudence should have known that such use of the public sidewalk was calculated to cause the sidewalk to have refuse matter thereon and to become in an unsafe condition for pedestrians, and that this use of the sidewalk for market purposes caused the injury, that then the District of Columbia also is liable to the plaintiff in damages.

4. "The jury are instructed that if they shall find that the plaintiff was injured as a result of the slippery and unsafe condition of the sidewalk at the place of the accident; if you find that said place was slippery and unsafe and that this condition was the result of the occupation of the sidewalk by venders of produce of whom the market company collected money and to sell produce on the sidewalk in front of the market company's stores, that the said market company were liable to the plaintiff for damages.

5. "The jury are instructed that it is the duty of the District of Columbia to keep the sidewalks of the street in a reasonably safe and unobstructed condition, and if they shall find that the said sidewalk at the time of the accident was slippery and unsafe the District of Columbia is liable to the plaintiff, provided it had reasonable notice of such condition and that this condition caused the injury.

6. "The jury are instructed that notice by the District of Columbia of the condition of the sidewalk on market days may be presumed from the existence of such condition for the time sufficiently long to have enabled the District through

its employees in the exercise of ordinary diligence to become aware of the same."

Thereupon the following instructions were granted the market company over the objections and exceptions of the plaintiff.

4. "The jury are instructed that the plaintiff in this action can only recover against the market company upon the theory that said company were guilty of some negligence, and the burden is upon the plaintiff to show by a preponderance of the evidence that said company were guilty of such negligence.

5. "It was the duty of the plaintiff in walking along the street in front of the market company's premises to use due and reasonable care for her own safety, and if the jury find from all the evidence that the accident complained of was caused in whole or in part by inattention or negligence on the part of the plaintiff herself, such as a reasonably prudent person would not be guilty of, then the verdict should be for the defendants.

6. "If the jury finds from the evidence that the defendants, the Northern Market Company, its agents, servants, or licensees were conducting or maintaining a market or place of business on the sidewalk where the plaintiff fell, yet their verdict must be for said defendant, unless they find that said defendant did not on the day of the accident exercise reasonable diligence under all the circumstances given in evidence to keep said sidewalk where the plaintiff fell in a reasonably safe condition, and that the accident to the plaintiff was caused thereby.

8. "The jury are instructed that their verdict must be for the defendant, the Northern Market Company, unless they find that the said defendant, its agents, servants, or licensees were conducting or maintaining a market or place of business on the sidewalk or street where the plaintiff fell.

Exception was also noted by plaintiff to the granting of the following prayers at the request of the District of Columbia:

4. "The jury are instructed that there is no evidence in this case of actual knowledge by the defendant, the District of Columbia, of either the alleged filthy condition of the sidewalk at the place of the accident or of the existence and location at that point of the alleged green vegetable matter on which it is alleged the plaintiff slipped and fell.

5. "The jury are instructed that the defendant the District of Columbia, is not liable in this case, unless they shall find the green vegetable matter on which the plaintiff says she slipped, if they find she did so slip, had been so long on the sidewalk that said defendant in the exercise of reasonable care and caution should have obtained knowledge of the same. And in this connection the jury are instructed that the law does not require impossibilities of any person, either natural or artificial, and the presence of green vegetable matter on the sidewalk at the point indicated in the evidence does not of itself impute notice to the defendant, the District of Columbia, unless such alleged condition of the sidewalk had so long continued as to afford constructive notice to said defendant.

6. "The jury are instructed that it was the duty of the defendant, District of Columbia, although it permitted the occupation of a part of the sidewalk by the defendant market company to keep the remainder of said sidewalk in reasonably safe

condition for the use of pedestrians and for obstruction on said sidewalk not caused by itself or its agents or employees, said defendant, District of Columbia, is not liable unless it had notice of the obstruction or unless the obstruction had lasted so long and under such circumstances that, with due diligence, it should have known of its existence."

We think the point well taken that these two sets of instructions can not stand together. In the instructions granted the plaintiff the case was presented to the jury on the theory that the market company had been responsible for a nuisance and that the District of Columbia had negligently suffered such nuisance to continue. In the instructions granted the market company the jury were told that the plaintiff could *only* recover upon the theory of negligence on the part of both defendants. When the case was here before, Mr. Justice Morris in discussing the responsibility of the market company said: "It matters not, therefore, that the market company may have been without lawful authority to establish a market in the street, as it did do in this case; if the establishment was in fact by the company, it is liable for all the consequences that might reasonably have been expected to result from its action. No one has a right unduly to obstruct the highway, but if he does in fact so obstruct it, there can be no reasonable doubt that he is liable for injury resulting from the obstruction."

If the market company was responsible for the unlawful occupation of the street it was guilty of maintaining a public nuisance and liable for any special damages naturally resulting from that nuisance regardless of the question of negligence. Having occupied a part of the sidewalk with vegetable vendors it was *prima facie* liable for injuries occasioned by the refuse which those vendors, in the course of their business, in the course of their unlawful occupation of the walk, permitted to litter such walk. The first and second prayers granted the plaintiff contain a fair statement of the rule.

Appellant objects specifically to Prayers V and VI granted the market company on the ground that the record contains no evidence that the plaintiff was negligent. We have carefully searched the record, and fail to find any evidence to support the charge. On the contrary, the record discloses that the street was crowded the morning of the accident, and a lady, who was near the plaintiff when she fell, testified that plaintiff "was walking along steadily" at the time. The plaintiff was not a trespasser, and we think that in the absence of *any* evidence of negligence the jury should not be permitted to indulge in conjecture on the subject.

Appellant also contends that under the evidence it was error to submit to the jury the question whether or not the market company was conducting or maintaining a market or place of business on the sidewalk. This assignment is without merit, because in the prayers requested by and granted plaintiff this question was submitted to the jury. The prayer granted the market company on this point was too technical and too liable to mislead the jury, but the court later on removed the ambiguity by instructing the jury that, if they should find that the hucksters "were there under the license and authority of the market company, paying the market company for the privilege of being there, and thereby using

the sidewalk under the authority of the market company, then the market company would be responsible in damages," provided, the jury should further find that the refuse material left upon the street "was the direct cause of the accident."

It is next urged that the court erred in instructing the jury that there was no evidence of actual knowledge on the part of the District of Columbia of the alleged condition of the sidewalk at the place of the accident. Mr. Justice Morris said this of the liability of the District: "If it (the District) did not establish a market, but suffered one to be carried on in the street in violation of law and the rights of the public, the occupation of the streets by the market dealers was a nuisance which it was its duty to abate, and for which, if anyone was injured thereby, it was liable to be held for damages." See, also, *Mischke v. City of Seattle*, 26 Wash., 616.

The defendants introduced four police officers, including a police captain, who testified that the market was one of the most important sections of their precinct; that the sidewalk was kept clean and in good condition; that "the market people would clean the street as soon as the market closed and would sweep up anything if they called the market master's attention to anything." These police officers, however, did not attempt to deny the unlawful occupation of the sidewalk by the hucksters. In view of this evidence of the representatives of the District, and in view of the evidence that the police officers of the District had driven away hucksters who would not pay the market company for the privilege of using the sidewalk, and in view of the further fact that the unlawful occupation by hucksters had continued for such a long period of time, we think the jury should have been instructed that the District did have notice of such unlawful occupation, and that as matter of law it was guilty of negligence in not suppressing the nuisance, and, therefore, equally responsible with the market company.

Nor was it necessary for the plaintiff to show that the District had knowledge of the particular vegetable or other matter which it was alleged caused the accident. If the jury had determined in the affirmative the question whether the sidewalk had been unlawfully occupied by or under the license of the market company with the knowledge of the District, it would have then been necessary only to determine whether the vegetable or refuse matter causing the accident was the natural outcome and result of the particular nuisance maintained by or under the market company with the knowledge and acquiescence of the District.

The assignment of error based upon the refusal of the court to permit plaintiff to prove "by the stenographic notes taken by witness certain admissions made at the former trial by Jesse B. Wilson, president and treasurer of the market company, whom plaintiff had then put upon the stand," is not well founded. The court could not *assume* that Mr. Wilson was the president and treasurer of the market company; but, aside from that, Mr. Wilson was present in court and was immediately called by the plaintiff as a witness and carefully questioned as to his former testimony. The plaintiff, therefore, lost nothing by this ruling.

The remaining assignments of error necessary to be noticed are not well founded. They involve the question whether it was error for the court to permit the defendants to introduce testimony tending to show the general condition of the sidewalk for a period prior to the accident. The plaintiff having introduced testimony tending to prove the existence of a nuisance; that the sidewalk had been in bad condition for ten years on account of similar vegetable and refuse matter; that it had been "decidedly worse the summer of 1901," the year of the accident; and that no attempt had ever been made to keep the sidewalk clean during market hours, it is apparent that it was proper to permit the defendants to meet that testimony. The injury suffered by the plaintiff was not directly caused, according to her own statement, by the illegal obstruction in the sidewalk. She did not contend that she fell over the vegetable and fruit stands. She did contend, however, that she slipped on something upon the unoccupied or open part of the sidewalk that was thereon as the result of the nuisance maintained by the market company, and not something carelessly thrown thereon by some passer-by. She, therefore, introduced evidence of the prior condition of the walk. While the evidence introduced by the defendants was somewhat general and indefinite, it was, we think, admissible. It was the function of the jury to determine the weight that should be given it.

The judgment must be reversed, with costs; and the cause will be remanded with directions to set aside the verdict and judgment and to award a new trial. And it is so ordered.

Reversed.

EDWIN H. EASTERLING, GUARDIAN, APPELLANT,

v.

GEORGE D. HORNING, APPELLEE.

GUARDIAN AND WARD; UNAUTHORIZED PLEDGE OF WARD'S PERSONAL ESTATE.

1. Under sections 163, 164, and 165 of the Code, providing methods for the sale, mortgage, or leasing of the property of an infant, and section 1135 of the Code, prohibiting the sale of an infant's estate without an order of court, and Rule 21 of the Probate Rules of the court below, providing that guardians are not allowed to dispose of the ward's property or encumber it in any way without order of court, an attempt by a guardian to dispose of the title to property belonging to his ward in any other way than that provided therein is void.
2. The title to the personal estate of an infant remains in the infant and is not transferred to a guardian appointed for him.
3. Certain jewelry was given by will to an infant daughter of testatrix, the will providing that it should be held for her by her grandmother until she came of age. The grandmother took out letters of guardianship. Subsequently, without any order of court authorizing her to do so, she pledged the jewelry to secure a loan obtained from defendant, a pawnbroker. On the death of the grandmother plaintiff was appointed as guardian of the infant, and the present suit was brought to recover the jewelry. Held that the act of the grandmother in pledging the jewelry was void, and that the jury should have been directed to return a verdict for plaintiff.

No. 1775. Decided January 6, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,754, entered upon a verdict directed by the court in an action of replevin. Reversed.

Mr. ANDREW WILSON and Mr. N. W. BARKSDALE for the appellant.

Mr. C. C. TUCKER and Mr. J. MILLER KENYON for the appellee.

Mr. Justice BARNARD, of the Supreme Court of the District of Columbia, who sat with the court in the place of Mr. Justice ROBB, delivered the opinion of the Court:

In this case the appellant filed a declaration in replevin in the Supreme Court of the District of Columbia, being number 48,754, to recover certain jewelry alleged to be the property of his ward, Beatrice Mae Lang, an infant.

The defendant pleaded "not guilty," and the case was tried before a jury; and at the close of the testimony, the jury, by direction of the court, returned a verdict for the defendant, on which verdict judgment was rendered. The plaintiff, having obtained possession of the jewelry by the writ, the judgment provided that the plaintiff should return the property replevied, with costs, or on failure, that the defendant should recover against the plaintiff, and his surety, \$450, the value of the property as agreed upon by both parties.

From this judgment the plaintiff appeals.

It appears that the jewelry in question consisted of rings, watches, necklaces, pins, a cameo set, and a neck chain, which had previously belonged to the mother of the infant, Beatrice Mae Lang; that on the death of the mother, these jewels were given by her will to the daughter, the will providing that the mother of the testatrix should keep the same for her until she, the infant legatee, became of age.

The record discloses that the grandmother took out letters of guardianship on the estate of her granddaughter on the 20th of June, 1901, giving a bond in the penalty of \$50; and took possession of said jewelry, with other property. That on February 3, 1904, without any order of the Probate Court allowing her to do so, the said grandmother, either as guardian, or custodian of the jewels, went to the place of business of the defendant, a pawnbroker, and pawned the said jewelry for a loan of \$300, on which it was agreed that interest should be paid at the rate of three per cent per month, or fraction thereof, the pledgee agreeing to hold the said property for twelve months, or in case of renewal, twelve months from the date on which interest shall be paid; if not renewed or redeemed, the goods were to be sold at the end of twelve months.

Beatrice Mae Lang was born May 8, 1891; her father died in the same year, and her mother remarried, and died on June 14, 1901; and she lived with her grandmother all her life up to the date of her grandmother's death, which occurred August 17, 1906.

Four errors are assigned upon this record:

First, that the court erred in holding that Mrs. Myers, under the terms of the will in question, held title to the jewelry as testamentary guardian; second, that it erred in holding that Mrs. Myers had a right as testamentary guardian to pawn the jewelry without an order of the Probate Court; third, that it erred in holding that the defendant's express or constructive notice of Mrs. Myers' trust was immaterial; and fourth, that it erred in holding that there was no question of fact to be submitted to the jury.

The fourth error assigned is based upon the

testimony in the record of the infant, Beatrice Mae Lang.

She stated that she went with her grandmother to the pawnshop of George D. Horning, on February 3, 1904, when her grandmother pawned the articles of jewelry replevied in this suit. She says she heard her grandmother tell Horning at the time the goods were pawned, that they were left to her (the witness) under the will of her mother, to be kept by her (the grandmother) until she (the witness) became of age; and that she (the grandmother) was the guardian of the witness.

This statement of the infant is contradicted by Mr. Horning in his testimony, but if the same was material, it should have been submitted to the jury to be weighed by them in connection with all the other evidence in the case.

If, however, the guardian had a right to pawn the jewelry without any order of the court, then it would be immaterial whether Horning was told that she was the guardian or not.

He admits that he was acquainted with the grandmother of Beatrice Mae Lang, and that she, the infant, came with her grandmother to his place of business, but he denies that he had any information as to the ownership of the jewelry, and claims to hold it as a bona fide pledgee for value, on a pledge made by Mrs. Myers in her own right.

If the title to the jewelry was vested in the infant, and the grandmother had taken the jewelry to the defendant and pledged it without the knowledge of the owner, and without any authority from the owner, could the defendant have taken title by the mere fact of possession by the grandmother and pledging to him? Would not the maxim caveat emptor apply to the defendant in that case equally with its application in a case of property that was stolen? If no right existed in the grandmother to part with the possession of the jewelry, how can the defendant maintain his position that he is a bona fide holder of the jewelry, for value, in the regular course of business, any more than he could if the grandmother had stolen the property and brought it to him?

It seems to us that the court should first determine what her authority was; and if it is decided that she had no power to sell or pledge the jewelry, without an order of court first obtained, it would seem to follow that the pawnbroker should have inquired and found out whether she had such order or not, or that if he did not do so, he would take the goods at his own peril.

Counsel for the appellee contend that a guardian at common law had the right to sell his ward's personal property without an order of the court. *Lamar v. Micou*, 112 U. S., 452; *Maclay v. Eq. Life Ass. Society*, 152 U. S., 499, and a number of other authorities are cited to sustain this position.

Section 1135 of the Code of this District, however, provides that "no guardian shall sell any property of his ward without an order of the court previously had therefor."

It is argued that this section of the Code only makes a sale by a guardian without previous order of the court a voidable one, but that it is not absolutely void, and that as between the ward and a third person to whom the guardian may have wrongfully sold the property, such sale would be absolute if received for a good consideration,

and the ward could not reclaim it from such purchaser.

It is further contended that the prohibition against a sale of property does not include a prohibition against pawning it.

We are not prepared to concede this contention, and our attention has been called to a number of cases under similar statutes, where the courts have held a contrary doctrine.

Section 165 of our Code provides a method by which a sale of the property of an infant may be properly made as follows:

"Wherever it shall appear upon the petition of the infant by next friend, or of the guardian of an infant, and the appearance and answer of such infant by guardian to be appointed by the court, and proof by depositions of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of some part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in life, the said court may decree such sale on such terms as to it may seem proper."

Some of the courts have held under a similar statute that the maxim *expressio unius est exclusio alterius* applies, and that where a provision of this kind is made a sale attempted to be made in a contrary way will be held void. *De La Montagnie v. Insurance Company*, 42d California, 290; *The Mayor, etc., v. Norman*, 4th Maryland, 352; *Washabaugh v. Hall*, 4th South Dakota, 168; *Mack v. Brammer*, 28th Ohio State, 508; *Merritt v. Simpson*, 41st Illinois, 391; *McDuffy v. McIntyre*, 11th South Carolina, 551; *Cyc*, 85; *Woerner's American Law of Guardianship*, section 62.

In addition to these two sections of our Code, the one providing a method for the sale of the estate of an infant, and the other prohibiting the sale without first obtaining an order of the court, section 164 provides for mortgaging the real estate of an infant, and section 163 for leasing for a term of years the real estate; and by the 4th section of Rule 21 of the Probate Rules of the Supreme Court of the District of Columbia—

"Guardians are not allowed to dispose of the ward's property or incumber it in any way without order of court."

This rule has all the force and effect of law, so far as the guardian's power to pledge or mortgage the infant's estate is concerned; and we are inclined to hold that these statutes and rules, taken as a whole, render void any attempt by a guardian to pledge or otherwise dispose of the title to property which the law says is in the infant in any other way than that provided therein. *Jones on Pledges*, sections 53 and 54.

If the property was so disposed of by the guardian, and the infant on reaching his majority should see fit to disregard the action of his guardian, he might treat the attempted sale as a nullity, and recover the property, if the same could be found and recovered; and it being the duty of the guardian of an infant to collect and take possession of and hold and preserve his estate, the plaintiff in this case as guardian would have a right on behalf of the infant to treat such a sale as void, and to exercise for the infant the right which the infant would have on arriving at the age of 21 years.

There is a difference in the authorities between the personal representative of a decedent and the guardian of an infant, in this, that the personal

representative of a decedent takes the title to the personal estate left by the decedent, while the title to the personal estate of an infant remains in the infant, and is not transferred to the guardian when one is appointed. Woerner's American Law of Guardianship, section 53.

It seems to the court in this case that there can be no question that the title to the jewelry was vested in the infant, as a specific bequest under her mother's will; and that while she was under guardianship it was the duty of the guardian to preserve and protect her estate, saving it for her use and maintenance, and not to dispose of any portion of it, unless authorized to do so by the court.

We further think that the Probate Court would never have authorized the guardian to pawn the jewelry in this case for a loan bearing interest at 3 per cent per month.

If a proper application had been made to the court to sell the jewelry, and it was necessary to do so for the support of the infant, a sale might have been authorized; but a pledge and an agreement to pay 3 per cent per month interest, would virtually amount to a disposition of the property beyond the recall of the guardian, and at the same time the contract of the defendant, as shown by the pawn ticket, was that he was not to be responsible for loss or damage of any of the goods by fire, robbery, or other casualty; and the arrangement was that, unless redeemed or renewed, the goods were to be sold at the end of twelve months.

This pawn ticket does not seem to have been signed by the guardian, consenting to such sale, but, nevertheless, she accepted the ticket from the defendant, and the same came into the hands of the plaintiff as the guardian succeeding her, and the evidence of the transaction comes into the record in that way.

The record further discloses that Mrs. Myers, the guardian, obtained the authority of the Probate Court, on petition, to mortgage certain real estate for a loan of money, so that it can not be inferred that the jewelry pawned was the only estate which the infant had, and that it was necessary to obtain money by pawning the same in order to support the infant.

The order of the Probate Court permitted the said guardian to borrow \$900 on the said real estate, on June 25, 1902; and she borrowed the \$300 on this jewelry on February 3rd, 1904; and there is nothing in the record showing the necessities of the infant at that time.

We need not consider the other assignments of error, for we are disposed to hold, on the whole case, that it was error to instruct the jury to return a verdict for the defendant, and for which error the judgment appealed from must be reversed.

We are further of the opinion that no title whatever passed from the infant to the defendant by the pledge made by the guardian of the infant; and that, therefore, the instruction should have been that the jury return a verdict in favor of the plaintiff.

The judgment of the Supreme Court of the District of Columbia is, therefore, reversed with costs, and the case is remanded to that court for a new trial, and such further proceedings as may be consistent with this opinion.

## Court of Appeals of the District of Columbia.

JOHN A. BRILL ET AL., APPELLANTS,  
v.

THE WASHINGTON RAILWAY AND ELECTRIC COMPANY.

PATENTS; INFRINGEMENT; COMITY OF DECISION.

In a suit in equity to enjoin the infringement of a patent, where it appeared that the question of the validity of the patent claimed to have been infringed had been decided adversely to complainant by the United States Circuit Court of Appeals for the Third Circuit, and that that decision had been followed by two other courts in cases instituted by the same complainant, *held* that the court below properly applied the doctrine of comity in this case, and its decree dismissing the bill of complaint affirmed.

No. 1632. Decided January 8, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 25,161, dismissing a bill to enjoin infringement of patent. Affirmed.

Mr. MELVILLE CHURCH and Mr. FRANCIS RAWLE for the appellants.

Messrs. DUELL, WARFIELD & DUELL for the appellee.

PER CURIAM: After the former submission of this cause a conclusion was reached, but Mr. Justice McComas, to whom the preparation of the opinion had been assigned, died before it could be delivered and the decree entered. The case has been resubmitted by stipulation of the parties to the two remaining members of the court. Their views remaining unchanged, the opinion prepared by Mr. Justice McComas is adopted and filed as the opinion of the court. In accordance therewith the decree will be affirmed with costs. It is so ordered by the court.

The opinion, as prepared by Mr. Justice McComas, is as follows:

This is an appeal from the decree of the court below on final hearing upon a bill filed by John A. Brill and the J. G. Brill Company to restrain the defendant, The Washington Railway and Electric Company, from infringing upon two letters patent to G. Martin Brill for improvements in car trucks and for an accounting.

The letters patent are number 627,898, and the claims in controversy therein are as follows:

"13. The combination in a car-truck, of the side frames, the semi-elliptic springs movably and resiliently suspended from the side frames, and a bolster secured to said springs, substantially as described.

"81. The combination in a car-truck, of the side frames, the semi-elliptic springs, a cross-bolster resting on the semi-elliptic springs, links, and springs combined with said links, said links deriving their support from the side frames and connecting the ends of the semi-elliptic springs with the side frames, substantially as described," and numbered 627,900, wherein the claims in controversy are as follows:

"13. In a car-truck, the combination with the side frames, of the links comprising bolts pivoted between their ends, said links being pivotally suspended from the side frames, longitudinally-disposed semi-elliptic springs secured to the lower end of said bolts, a cross-bolster resting on said

springs, and further springs included in the link suspension of said semi-elliptic springs, substantially as described.

"14. In a car-truck, the combination with a side frame, of the cross-bolster suspended below the side frame by semi-elliptic springs and pivotal links, said links comprising a plurality of sections pivotally secured together and further springs combined with said links to elastically suspend said semi-elliptic springs from the side frame, substantially as described.

"15. In a car-truck, the combination of the side frames, of the cross-bolster suspended below the side frames by semi-elliptic springs and articulate and pivoted links, said links comprising a plurality of sections pivotally secured together, and spiral springs about and combined with said links to elastically suspend said semi-elliptic springs from the side frames, substantially as described.

"17. The combination in a car-truck having an upper chord, of the longitudinally-disposed semi-elliptic springs, a transverse bolster supported upon said springs, links depending from and flexibly supported on said upper chord and passing through enlarged apertures therein, said links being articulated between their ends, the ends of the semi-elliptic springs being supported upon the lower articulation of said links, substantially as described."

These patents bear date of June 27, 1899, the latter of the two patents being divisional in its relation to the former. The original application was filed July 3, 1897, and the divisional application November 9, 1897. Both patents relate to improvements in "car-trucks generally," but especially to trucks employed in passenger service in connection with electric propulsion.

The bill was filed by Jon John A. Brill, assignee of the patents and the J. G. Brill Company, manufacturers of car trucks in Philadelphia and exclusive licensees under the patents.

The Peckham Motor Truck and Wheel Company of Kingston, New York, manufactured the trucks in controversy and later passed over its plant and business to its successor, the Peckham Manufacturing Company.

It appears that the present suit is the fifth which has been instituted by the complainants, the first having been prosecuted by John A. Brill, assignee of George N. Brill, the patentee, without joining the J. G. Brill Company, the exclusive licensee of the patent, which was joined in the next two suits. All of these suits involved alleged infringing constructions of the same type as the Peckham 14 B3 trucks and all of the claims with which we are here concerned were involved in the principal suit in which there was a final adjudication.

In the order named these suits were instituted against North Jersey Street Railway Company, in the United States Circuit Court for the District of New Jersey; Peckham Motor Truck and Wheel Company et al. and Peckham Manufacturing Company et al. in the United States Circuit Court for the Southern District of New York; Anacostia and Potomac River Railway Company, and the Washington Railway and Electric Company in the Supreme Court of the District of Columbia. The first named suit proceeded to final hearing. The decree of the Circuit Court in favor of John A. Brill was reversed by the United States Circuit Court of Appeals of the Third Circuit and the case was remanded to said Circuit Court of the

United States for the District of New Jersey with directions to enter a decree dismissing the bill of complaint with costs. The said Circuit Court of Appeals decided that "claim thirteen of the Brill Patent No. 627,898 and all the other claims in suit which rest upon the like combination" was void for want of patentable invention. Claims 13 and 17 of letters patent No. 627,900 were further declared not infringed. Claims 14 and 15 of the latter patent were not adjudicated.

Preliminary injunctions, which had been obtained in the Southern District of New York in the second and third suits before mentioned, based upon the decision of the Circuit Court in New Jersey in favor of complainant were vacated and reversed upon appeal, the Circuit Court of the Southern District of New York and the Circuit Court of Appeals of the Second Circuit having by comity followed the decision and decree of the Circuit Court of Appeals of the Third Circuit. The suit against the Anacostia and Potomac River Railway Company was discontinued.

It sufficiently appears from the record that the present suit involves the same complainants, the J. G. Brill Company being one of a combination of several companies and having been in privity with John A. Brill in the suit in the Circuit Court for New Jersey; that the manufacturer of the alleged infringing trucks is and was the real defendant in each case; that the Peckham Manufacturing Company is the successor to the Peckham Motor and Wheel Company and that the same type of alleged infringing construction and the same claim of the same letters patent with the exception of claims 14 and 15 of letters patent No. 627,900 which were involved in the New Jersey suit and as to which no decree was entered are involved herein.

The complainants in this suit have produced the same expert, and, with some exceptions, the same witnesses who testified in the North Jersey suit, and all of the testimony covers the same ground. The defendants herein have for the first time produced two witnesses, alleged experts in Patent Office proceedings, and have cited additional patents as references. The subject-matter of this suit was adjudicated by the Circuit Court of Appeals of the Third Circuit. The present and prior cases are stages of the same controversy between competing truck builders.

Judge Bradford in the court below in the North Jersey suit justly remarked that it was admitted on the part of the complainant that unless the suit be maintained with respect to claim 13 it can not be maintained as to any of the claims of Patent No. 627,898. The same admission and conclusion must be taken as true of claims 13 and 17 of Patent No. 627,900, because these claims cover all that is material in this suit.

The patents in suit belonged to an art in which very many patents have been granted for trucks adapted for use with vehicles propelled by steam or horse power and later, as electric motors have come into use, the art of truck construction, whether relating to car trucks generally or to trucks employed in passenger service in connection with electric propulsion, has with convenient modifications been applied to modern uses.

The claims with which we are here concerned in Patent No. 627,898, involve a truck frame, spring links suspending from the truck frame, semi-elliptic springs connecting the links, and



means (a bolster) for connecting the semi-elliptic springs with the car body.

Claims 13, 14, 15, and 17 of Patent No. 627,900 embody the same element but particularly relate to the details of spring link construction, and this patent being divisional, relates more specifically to the precise form of link construction illustrated therein.

In the specification of Patent No. 627,898 Brill disclaims the location of the spring links and semi-elliptic springs. This disclaimer involves two admissions which appear to preclude the complainants' claims in this controversy. It appears that all of the claims of the two patents in suit are invalid either as anticipated in the prior art and lacking in patentable invention.

We strongly incline to the opinion that these claims disclose no patentable invention over the Thyng patent, and that it did not involve patentable invention to substitute in the Thyng combination of spring supported bolster and nonelastic hangers, the spring hangers or spring-supported hangers of the Beach, Haskins, Brill, and Curwen, or other patents, or at the least that the claims of Brill's patents must be limited to the specific form of hangers disclosed in said patents and when so limited in view of the prior art the defendant's structure does not infringe the claims in suit under Brill's patent. We do not intend to discuss these propositions, nor state the grounds which incline us to adopt these conclusions.

In this protracted litigation we are convinced that the claims of comity should be regarded and we should respect the decision of the Circuit Court of Appeals of the Third Circuit which decided this controversy adversely to the appellant here. We strongly incline to agree with the opinion of Judge Acheson speaking for that tribunal. The court below followed that opinion and decision. The Circuit Court of Appeals of the Second Circuit appears to have followed it. Comity applies only to questions which have been actually decided and which arose under the same facts. The able and ingenious argument of appellants' counsel has failed to convince us that there is a material difference between the case we here review and that determined by the Circuit Court of Appeals of the Third Circuit. The real parties to each litigation are the same; the real questions involved are the same; the difference in witnesses and in testimony are not enough to vary the conclusion reached by that court. The additional references and the testimony of Freeman and Sanders are persuasive. As the Supreme Court has said in *Mast, Foss & Co. v. Stover Mfg. Co.*, 177 U. S., 485, 489:

"The obligation to follow the decisions of other courts in patent cases of course increases in proportion to the number of courts which have passed upon the question, and the concordance of opinion may have been so general as to become a controlling authority. So, too, if a prior adjudication has followed a final hearing upon pleadings and proofs, especially after a protracted litigation, greater weight should be given to it than if it were made upon a motion for a preliminary injunction. These are substantially the views embodied in a number of well-considered cases in the circuit courts and circuit courts of appeals. *Macbeth v. Gillinder*, 54 Fed. Rep., 169; *Electric Manufacturing Co. v. Edison Electric Light Co.*, 61 Fed. Rep., 834; S. C., 18 U. S. App., 637;

*Edison Electric Light Co. v. Beacon Vacuum Pump and Electric Co.*, 54 Fed. Rep., 678, and cases cited; *Beach v. Hobbs*, 82 Fed. Rep., 916; S. C., 63 U. S. App., 626; see also, *Newall v. Wilson*, 2 DeGex, M. & G., 282."

The appellants' additional evidence here that the truck in suit is the highest development of the art does not answer the argument of Judge Acheson. Uebelacker, the patentee of the patent under which the defendant justifies, it is true, testified to what may appear attempted piracy of the Brill construction, although the witness qualifies his statement and says he did not intend to copy it. But the Circuit Court of Appeals concluded that at the time the appellee's structure was adopted it had the absolute right to make, use, and sell the truck designed by Uebelacker for the Peckham Motor Truck and Wheel Company, and the witness further testified that he was familiar with the Thyng and Haskins' patents and did not regard the spring arrangement of the Brill truck therefore as anything new in the art. It is true that the relative importance of different patents relied on in the New Jersey case and in this to show that the appellants' patents are invalid or not infringed is differently valued in the two different suits. It appears to us that the New Jersey court has found enough to justify its conclusion that the patentee Brill made a substitution which may have secured better results, but which did not involve invention; nor in our opinion did that court err in holding that the disclaimer we before quoted is a solemn confession of priority in favor of Brill or Curwen or in concluding that the only difference between the combination shown and claimed by Brill and Curwen and the principal combination of the claims involved in that suit (as in this) was that the latter claims called for a semi-elliptic spring for connecting the links, instead of equalizing bars, nor did the court err, in our opinion, in saying that it was old to use semi-elliptic springs for connecting the links. If patentable invention is lacking in the claims of the parent patent it appears that the claims of the second patent must fall within the claims of the first patent when broadly construed. At least if claims 14 and 15 are valid when specifically construed the appellee does not appear to have infringed these claims.

We are convinced that it was proper and expedient for the court below to apply the doctrine of comity to this case, and that the decree of the court below dismissing the bill of complaint in this cause should be affirmed with costs and it is so ordered.

Affirmed.

Evidence—Declarations as to Pain.—Declarations of plaintiff as to his physical suffering, which were no part of the *res gestæ*, where plaintiff fully described the character and extent of his injuries, were properly excluded. *Goodwyn v. Central of Georgia Ry. Co.* (Ga.), 58 S. E. Rep., 688.

Evidence—Letters.—In an action for attorney's services, letters written by defendant to plaintiff showing that defendant was engaged in leasing buildings for immoral purposes held admissible to show that plaintiff had rendered services consisting of advice and consultation in regard thereto. *Stern v. Daniel* (Wash.), 91 Pac. Rep., 552.

**Sale—Evidence—Statute of Frauds.**

In the case of *Becker v. Calmenson*, decided recently by the Supreme Court of Minnesota, it appeared that an order for the sale of goods, as reduced to writing by the salesman, was addressed to the respondents in Chicago and contained the words, "Sold to Philip Calmenson, Montevideo, Minn." Then followed certain figures under their respective headings, designating lot, quality, price and quantity purchased, and the sum total price. The writing also contained the words, "This order not subject to cancellation." It was not signed by appellant, and no mention was made in it as to terms of payment, except that the terms were to be as before. The court held that so far as the writing indicated anything, it purported to be a sale of goods already manufactured, amounting to more than \$50, and was void under the statute of frauds because not signed by the party to be charged therewith. The court ruled that parol evidence was competent to prove that the respondents were manufacturing clothiers only; that the appellant had transacted business with them as such for a number of years, and that the contract was not, in fact, for the sale of goods already manufactured, but was an order for goods to be manufactured specially for appellant, according to certain sizes, designs and quality. In the view of the Supreme Court the trial court erred in striking out all testimony as to conversations between the parties prior to the time the order was reduced to writing.

**Injunction—Labor Unions—Interference.**

The Supreme Court of the United States on Monday denied the petition of the Sailors' Union of the Pacific and the Pacific Coast Marine Firemen's Union against the Hammond Lumber Company for a writ of certiorari. This decision leaves in operation a temporary injunction granted by the Federal Circuit Court for the Northern District of California restraining the members of the unions, who were on strike for an increase of wages, from interfering with other employees of the lumber company.

**Evidence—Matters of Common Knowledge.**

The court will take judicial notice that a great majority of medical writers and practitioners advocate vaccination as an efficient means of preventing smallpox. *Auten v. Board of Directors of School Dist. of Little Rock (Ark.)*, 104 S. W. Rep., 130.

**Marshalling Assets and Securities—General Rule.**—The rule as to marshalling assets if one creditor can resort to two funds and another creditor only to one of them is subject to the limitation that such marshalling must not be applied to the detriment of a third person with an equity equal to or greater than that of the creditor. *Mulherin v. Porter (Ga.)*, 58 S. E. Rep., 60.

**Master and Servant—Assumed Risk.**—Where a servant continues to work with knowledge that the instrumentality is dangerous, but after command of the master and his assurance of safety, the question of assumption of risk is for the jury. *Bush v. West Yellow Pine Co. (Ga.)*, 58 S. E. Rep., 529.

**Accident—Contributory Negligence.**

In the case of the New York, Chicago & St. Louis Railroad Company v. Hamlin, recently decided by the Supreme Court of Indiana, answers to interrogatories showed that the appellant's car, which the appellee (a brakeman) was required to couple, was defective in that a large nail was allowed to project so that it might catch and injure an employee. It appeared, however, that on one occasion, when the appellee's clothing was caught by the nail so that he was thrown under the car and injured, he was unnecessarily trying to step upon the track and walk in front of the car while it was moving, to make a coupling which he could have made in perfect safety by using the means provided, and without possibility of injury by catching on the protruding nail, and the court held that this showing established contributory negligence as matter of law.

**Death—Statute Giving Right of Action.**—The rule established by the weight of authority is that if a statute of the forum creates a right of action for damages resulting from death caused by wrongful act, neglect or default, a foreign statute creating such right will be enforced if the two statutes be not so dissimilar as to establish substantially different policies. *Keep v. National Tube Co., U. S. C. C., D. N. J.*, 154 Fed. Rep., 121.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Kay McCammon, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 23d day of January, 1908. ORMSBY McCAMMON, AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Wm. A. McKenney, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,164. Administration. [Seal.] 4-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Chas. A. Jaquette, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John S. Anderson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. **CHARLES A. JAQUETTE**, Sec'y's Office, Treas'y Dept. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,978. Administration. [Seal.] 4-3t

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henry P. Sanders, Deceased.**  
 No. 14,966. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, it is ordered this 23d day of January, A. D. 1908, that Annabel Sanders (minor), Carrie Louise Sanders, William Bennet Sanders, Harry Douglass Sanders, Leander Edwin Sanders, Archie D. Sanders and Ilette B. Sanders, and all others concerned, appear in said court on Monday, the 24th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein

mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

**Levi H. David, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Camille Jacobs et al., Complainants, v. Irving Jacobs,**  
**Defendant. Doc. 58. Eq. 26,475.**

On consideration of the report of Levi H. David, trustee, and the affidavit accompanying the same, filed herein, showing offer from Henry M. Adams, in the sum of \$218.90, in cash, for the equity in the 16.79-100 ft. front on lot 14, extended, next north of the south 16.78-100 ft. of lot 14, by depth of 137 ft. and parallel to the south side of said lot 14, in block 38, Columbia Heights, improved by premises 8123 14th st., said real estate being subject to a deed of trust of \$6,000 at 6%, said Adams agreeing to pay all taxes, and cancel all interest, due upon said property, it is by the court, this 23d day of January, 1908, ordered, adjudged and decreed that said offer be, and same is hereby ratified and confirmed, unless cause to the contrary be shown on or before February 24th, 1908. Provided a copy of this order be published in The Law Reporter once a week for three successive weeks prior to said last mentioned

[Seal] date. **ASHLEY M. GOULD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 4-3t

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Special Term for Probate Business.**  
**In re Estate of Jennie H. Scott, Deceased.**  
 No. 14,851. Admn. Doc.  
**ORDER OF PUBLICATION.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert F. Fox and Joseph J. Darlington, it is ordered this 23d day of January, A. D. 1908, that Jennie McElroy Brown, Andrew J. McElroy, Sarah McElroy, Gordon W. Boyd, John Boyd, Jemima Alexander, the unknown heirs at law and the unknown next of kin of said deceased, of Clinton McElroy, and of Sherman Boyd, and all others concerned, appear in said court on Wednesday, the 26th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein

mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of Probate Court. 4-3t

**Legal Notices.**

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Wm. H. Yerkes**, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 10th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 21st day of January, 1908. **HANNAH A. YERKES**, JNO. K. YERKES, **WILLIAM H. YERKES, Jr.**, by **J. J. Darlington**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,127. Administration. [Seal.] 4-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Richard Young**, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 14th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of January, 1908. **AMERICAN SECURITY & TRUST CO.**, by **James F. Hood**, Secretary; by **Wm. A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,143. Administration. [Seal.] 4-3t

**Gordon & Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Lizzie B. Gladmon v. Florence Edith Cross et al.**  
 Equity No. 27,298.

The object of this suit is to sell for partition the property of which **Celia E. V. Beall** died seized, namely, part of lot 4, in square 556, in the city of Washington, in the District of Columbia. On motion of the complainant it is, this 21st day of January, A. D. 1908, ordered that the defendants, **Florence Edith Cross**, **Evelyn E. Copeland**, and **Marshall Elmer Carrier**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Wash-

[Seal] ington Law Reporter and The Evening Star. **ASHLEY M. GOULD**, Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 4-3t

**M. J. Keane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Connor**, sometimes known as **John O'Connor**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. **MICHAEL J. KEANE**, 412 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,917. Administration. [Seal.] 4-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

**Birney & Woodard, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Loring Chappel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. ARTHUR A. BIRNEY, 602 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,957. Administration. [Seal.] 4-St

**Chas. J. Murphy, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles L. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. EDWARD V. MURPHY, 2511 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,988. Administration. [Seal.] 4-St

**C. Clinton James, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. MARGARET A. GIBSON, care of C. Clinton James, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,960. Administration. [Seal.] 4-St

**Thompson & Laskey, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Frost, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. JOHN E. LASKEY, 844 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,848. Administration. [Seal.] 4-St

**Kappler & Merillat, Attorneys**  
In the Supreme Court of the District of Columbia.  
Frances S. Nichols v. George W. Nichols.  
No. 27,316.

The object of this suit is to obtain a decree a mensa et thoro by complainant against defendant, custody of their two children Eugene M. and George A. for complainant, and an injunction against defendant from molestation of complainant and her two children by defendant. On motion of the complainant, it is this 8th day of January, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 4-St

**Legal Notices.**

**W. T. Fitz Gerald, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of January, 1908. JOHN ROBINSON, No. 5 North Hill Court N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,794. Administration. [Seal.] 4-St

**Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Neale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. FLORENCE NEALE, 1618 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,968. Administration. [Seal.] 4-St

**William L. Pollard, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Julia Kane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. WILLIAM W. QUEEN, 1810 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,598. Administration. [Seal.] 4-St

**Hamilton, Colbert, Yerkes, & Hamilton, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. White, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of January, 1908. HARRY M. WHITE, Greencastle, Franklin Co., Pa.; MICHAEL J. COLBERT, 412 5th st., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,811. Administration. [Seal.] 4-St

**SECOND INSERTION.**

**Wm. L. Pollard, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Culliam Wyatt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. WILLIAM L. POLLARD, 609 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,129. Administration. [Seal.] 8-St

**Legal Notices.**

**Irving Williamson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Zera Luther Tanner, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 5th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of January, 1908. HELEN B. TANNER, Executrix, by Irving Williamson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,113. Administration. [Seal.] 3-St

**F. H. Stephens, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret F. Buckelew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. HENRY COTHEAE EVANS, 918 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,793. Administration. [Seal.] 3-St

**Jas. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Eldridge J. Smith, Deceased.**  
 No. 13,718. Administration Docket. —  
 Application having been made herein for letters of administration c. t. a. d. b. n. on said estate, by Wilbur L. Wright, it is ordered this 14th day of January, A. D. 1908, that Andrew C. Smith, Theodore C. Smith, Fanny Roscovitch, Nora Smith, Frederick Smith, and Henry Smith, all of Takoma, Wash.; Mary Burns, Homer, Minn.; and Maud Hayes, of Lewisburg, Pa., and all others concerned, appear in said court on Wednesday, the 19th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 3-St

**Annual Report of the Law Reporter Printing Company, of Washington, D. C.**

In compliance with section 617, Code, District of Columbia, we, the undersigned, a majority of the board of trustees of The Law Reporter Printing Company, of Washington, D. C., do hereby certify that the capital stock of the said corporation is \$18,000, all of which has been paid in, and that there are no existing debts. M. W. MOORE, Vice-President and Acting President; RALPH P. BARNARD, H. RANDALL WEBB, CHAPIN BROWN, EDWARD H. THOMAS, A. A. BIRNEY, Trustees.

Subscribed and sworn to by M. W. Moore, Vice-President and Acting President, before me, a notary public in and for the District of Columbia, this 15th day of January, 1908. ALBERT HARPER, Notary Public, D. C. [Seal.] 3-St

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

**Geo. Francis Williams, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**William H. McCray, Complainant, v. John R. Tucker et al., Defendants. Equity No. 27,536.**

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to lots twenty (20), twenty-one (21), and twenty-two (22), in Henry A. Willard's recorded subdivision of square one hundred and fifty-one (151), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 17th day of January, 1908, ordered that the defendants, John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred D. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Tallafiero, Julia Clark Tucker, Nathaniel Beverly Tucker, William F. P. Tucker, John R. Bryan, Della Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Perronneam Brown, Virginia C. Braxton, St. George Tucker, Coalter, Ellis Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the defendants, the unknown heirs, devisees, or assignees of such of the above-named defendants that are dead, and the unknown heirs, devisees, or assignees of Thomas Tudor Tucker, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in five successive weeks prior to said return day [Seal.] In The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 3-St

**J. J. Darlington, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Frances W. Irelan v. Harriet L. Kendall et al.**  
 No. 27,438. Equity.

The object of this suit is to sell for partition all the property of which the late George H. B. White died seized, namely: Lot 7, subdivision of square 144; lot 20, square 250; lot 9, block 39, subdivision north grounds of Columbia University; lot 3, block 7, Cleveland Heights; lots 29 and 30, block 4; lots 4, 5, and 6, block 6; lots 13 and 14, block 12; lots 6 and 7, block 13, subdivision of part of "Trinidad;" undivided half interest in west 25.90 feet of lot 3, square 85; undivided twentieth interest in parts of "Lucky Discovery" and "Pretty Prospect," described in deed recorded in 11ber 1474, folio 194, of the land records of the District of Columbia, all being in the District of Columbia. On motion of the plaintiff, it is this 18th day of January, A. D. 1908, ordered that the defendant, Harriet L. Kendall, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 3-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Glittings & Chamberlain, Solicitors**  
In the Supreme Court of the District of Columbia.  
**William Wheeler Smith, Complainant, v. Amzi L. Barber et al., Defendants.** Equity, 27,500. Docket 60.

The object of this suit is to annul a certain deed, as to the complainant in this cause, from Amzi L. Barber, et ux. to John J. Albright, dated July 17, 1908, and recorded March 14, 1907, in liber 3063, at folio 81 et seq. of the land records of the District of Columbia, conveying lots 3, 4 and 5 in block 29 of John Sherman's trustees' subdivision of Columbia Heights, and, after the sale of said property pursuant to the terms of a decree passed in Equity No. 28,951, to empower and direct the trustees appointed therein to apply balance of proceeds to the satisfaction of certain other judgments obtained by the complainant against the defendant, Amzi L. Barber. It appearing to the court that the summons issued herein against the defendant, John J. Albright has been returned "not to be found," and the non-residence of the said defendant having been proved by affidavit to the satisfaction of the court, on motion of the complainant, it is, this 8th day of January, 1909, ordered that the defendant, John J. Albright, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter and The Washington Post.  
**HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer Aast. Clerk. 2-St

**J. J. Darlington, Attorney**

In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.  
In the Matter of the Estate of Claas Denekas, Deceased. No. 13,408. Admn. Doc. —.

Gustav H. Schulze and Ernest A. Sellhausen, executors, having reported a sale to James S. Fraser for \$1,100 in cash, of a part of the Villa Fiora property owned by the above-named Claas Denekas, in the District of Columbia, known as a part of the tract of land called "The Girl's Portion," and more particularly described in the report of the said executors filed in the above entitled cause, the land so reported said comprising about five hundred and ninety-five thousandths (.595) of an acre, more or less, it is by the court this 7th day of January, A. D. 1908, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of February, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said day in The Washington Law Reporter.

[Seal] **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 3-St

**E. L. White, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Hilland, late of the District of Columbia deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of January, 1908. **FRANK FREMONT SMITH, 1808 Mass. ave.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,820. Administration. [Seal.] 3-St

**B. F. Leighton, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza T. Ward, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. **MINNIE CHAPIN, Herndon, Va.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,848. Administration. [Seal.] 3-St

**Legal Notices.**

**Fred B. Rhodes, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Julia S. Marks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. **SAMUEL H. MARKS, 149 You st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,963. Administration. [Seal.] 3-St

**Wm. L. Pollard, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Fletcher, late of the District of Columbia, deceased. All persons having claims against the deceased, are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. **FRANKLIN I. A. BENNETT, 1214 Linden st. N. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,655. Administration. [Seal.] 3-St

**THIRD INSERTION.**

**Clarence R. Wilson, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maud T. Porter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of January, 1908. **MARIE E. ROELKER, 1434 Q st. N. W., Wash., D. C.; CARL J. ROELKER, State Bank Bldg., Richmond, Va.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,879. Administration. [Seal.] 2-St

**F. H. Stephens, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ferdinand Schroeder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. **EDWIN B. HESSE, 470 La. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,822. Administration. [Seal.] 2-St

**F. H. Stephens, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Watson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. **EDWIN B. HESSE, 470 La. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,831. Administration. [Seal.] 2-St



**Legal Notices.****F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,824. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. Cairns, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,823. Administration. [Seal.] 2-3t

**F. H. Stephens, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John J. Mountney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,825. Administration. [Seal.] 2-3t

**Carlisle & Johnson, Solicitors****In the Supreme Court of the District of Columbia.**

**David Paul Burleigh Conkling, Complainant, v. New York Life Insurance and Trust Company et al., Defendants.** No. 27,453. In Equity.

The object of this suit is to secure a conveyance in fee simple to the complainant, David Paul Burleigh Conkling, of the real estate situated in the city of Washington, District of Columbia, known and designated in the records of the surveyor's office of the District of Columbia, in liber 27 at folio 175, as lot numbered one hundred and thirty-nine (139) in Sarah B. Conkling's subdivision of lots numbered sixty-two (62) and sixty-three (63) of A. P. Fardon's subdivision of lots in square numbered one hundred and thirty-four (134) which the complainant in his bill claims that Sarah B. Conkling agreed to convey to him and the consideration for which conveyance the complainant claims to have paid to said Sarah B. Conkling in her lifetime. On motion of the complainant, it is this 10th day of January, A. D. 1908, ordered that the defendants, Della Mason Caldwell, Sarah B. C. Moller, Natalie Alberta Caldwell, James Caldwell, Natalie Burleigh von Ohnesorge, Paulina Feodor von Ohnesorge, Lebrecht Leopold von Ohnesorge, and Nathaniel Conkling, and every of them, do cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

[Seal]

Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

**Legal Notices.****John B. Dalsh, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Hellman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of January, 1908. MAE HELLMAN, 210 K st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,944. Administration. [Seal.] 2-3t

**J. J. Darlington, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Holtzman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of January, 1908. WILLOUGHBY S. CHESLEY, Bond Building, Wash. D. C.; CHARLES W. HENDLEY, 901-2 Continental Bldg. Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,891. Administration. [Seal.] 2-3t

**Jas. L. Neill, Solicitor****In the Supreme Court of the District of Columbia.  
Raquel Cruz Carter v. Heyward B. Carter.**

No. 27,581. Equity Docket No.

The object of this suit is to obtain absolute divorce on ground of adultery. On motion of the complainant, it is this 3d day of January, 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Law Reporter and Washington

[Seal] Bee once a week for three successive weeks.

By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert B. Donaldson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of January, 1908. UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, George E. Fleming, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,902. Administration. [Seal.] 2-3t

**Thomas Walker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel Jordan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of January, 1908. JOHN W. BRANSON, 832 3d st. S. W.; ALEXANDER S. HOWARD, 624 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,889. Administration. [Seal.] 2-3t



**Legal Notices.**

G. P. Montague, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

Estate of Bogislav Zglinitzki, Deceased.  
No. 14,885. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Wanda A. Buell, the executrix named in said will, it is ordered, this 8d day of January, A. D. 1908, that—Zglinitzki (address unknown) and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Friday, the 14th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.  
Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 2-3t

J. A. Maedel, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Peter Schweitzer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 3d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of January, 1908. THEODORE PLITT, 523 Q. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,800. Administration. [Seal.] 2-3t

A. E. Shoemaker, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lydia G. Conkling, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. LYDIA G. LEWIS, 2028 Kalorama Road. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,757. Administration. [Seal.] 2-3t

W. Gwynn Gardiner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Joseph D. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. ERNEST P. JONES, 235 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,833. Administration. [Seal.] 2-3t

Carlisle & Johnson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie H. Wise, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of January, 1908. WM. C. WISE, 1014 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,915. Administration. [Seal.] 2-3t

**Legal Notices.**

Chapin Brown and Wm. A. McKenney, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. Whittemore, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of January, 1908. CHAPIN BROWN, 828 John Marshall Place; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,946. Administration. [Seal.] 2-3t

F. H. Stephens, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Nelson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 8th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of January, 1908. EDWIN B. HESSE, 470 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,826. Administration. [Seal.] 2-3t

Robinson White, Solicitor

In the Supreme Court of the District of Columbia,  
Holding a Special Term Thereof in Equity.  
Clara S. Gross, Complainant, v. Henry J. Gross et als.,  
Defendants. Equity, No. 27,480.

The object of this suit is to obtain a divorce from the bond of marriage with the defendant on the ground of adultery. On motion of the complainant it is, this 2d day of January, A. D. 1908, ordered that the co-respondent, May Howard, cause her appearance to be entered therein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in the case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and Washington Times before said date. ASHLEY

[Seal] M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 2-3t

**FIFTH INSERTION.**

Philip Walker, Solicitor  
In the Supreme Court of the District of Columbia.  
Horace K. Fulton v. The Unknown Heirs, Devisees,  
and Allenees of Henry Burford and William  
O'Neale. In Equity, No. 27,443.

The object of this suit is to establish title in the complainant by adverse possession of lot 144 in Mary S. Milliken's subdivision of lot 49 in commissioners subdivision of original lot 17, in square 510, in the City of Washington, District of Columbia. On motion of the complainant it is, this 11th day of December, 1907, ordered that the defendants, the unknown heirs, devisees and allenees of Henry Burford and William O'Neale, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in The Washington Law Reporter and the Washington Post.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

dec 18, 20, 27; jan 17, 24; feb 14, 21.

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WASHINGTON, D. C. - - - JANUARY 31, 1908

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### Old Rules Wanted.

A collection of the old editions of the rules of the Supreme Court of the District of Columbia is being made by Mr. W. Mosby Williams, chairman of the Committee on New Rules of the Bar Association, who has already secured a copy of the editions issued in the years of 1869, 1875, 1879-81 with notes of Mackey, 1886, 1894, and 1898. Mr. Williams will appreciate the presentation of a copy of any edition in the series he lacks or will pay a reasonable price for the same. His office is in the Columbian Building.

### Right of Railroad Company to Discharge Employee for Membership in Labor Union.

An important decision affecting the rights of employer and employee was announced in the Supreme Court of the United States on January 27, 1908. The case was that of *Adair v. United States* and involved the validity of the provisions of the Erdmann law, so-called, enacted by Congress in 1898, forbidding railroads or other carriers engaged in interstate commerce to discriminate against or to discharge employees because of their membership in labor organizations. The tenth section of the act, containing such prohibition, is declared to be "an arbitrary interference with the liberty of contract which no government can justify in a free land," and therefore void as contravening the Constitution.

The opinion of the court is by Mr. Justice Harlan, and the questions involved are discussed in a vigorous and forceful manner. The broad ground is taken that "it is not within the function of gov-

ernment—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person against his will to perform personal service for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the condition upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant *Adair*—however unwise such a course might have been—to discharge *Coppage* because of his being a member of a labor organization, as it was the legal right of *Coppage*, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed those who were not members of some labor organization."

The opinion declares that while Congress, to regulate interstate commerce, has the power to prescribe rules by which such commerce must be governed, yet those rules, in order to be within the competency of Congress, must have some real or substantial relation to or connection with the commerce regulated. "But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization can not have, in itself, any bearing upon the commerce with which the employee is connected by his labor and services."

There is no such connection between interstate commerce and membership in a labor organization, says the court, as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power existed in Congress, it would be difficult to perceive why it might not by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of their interstate business only members of labor organizations. Such a rule of criminal liability could not in any sense be regarded as a regulation of interstate commerce. The power to regulate interstate commerce can not be exerted in violation of any fundamental right secured by other provisions of the Constitution.

The opinion is concurred in by six of the nine

justices; Mr. Justice McKenna and Mr. Justice Holmes dissenting, and Mr. Justice Moody taking no part in the determination of the case.

#### Amendment to the Common Law Rules.

The following order was promulgated by the Supreme Court of the District of Columbia, in general term, on January 22, 1908:

"Ordered, That an additional rule of this court be, and hereby is, promulgated, as follows:

"118. When there shall be pending in the special term known as the District Court, a cause in which the parties are by law entitled to a trial by jury, if either party shall demand a jury trial, the justice holding Criminal Court No. 2 shall transfer to said District Court, for such trial, the jury then in attendance in the special term known as Criminal Court No. 2, or a jury from either of the Circuit Courts may be transferred to such District Court, for such trial, by the justice holding the Circuit Court."

#### Proposed Revision of Rules of Supreme Court of the District of Columbia.

At the recent annual meeting of the Bar Association of the District of Columbia, Messrs. W. Mosby Williams, chairman, Wm. Henry White, and Wm. W. Millan, the committee on new rules, after being engaged on the work about eighteen months, submitted a final report accompanied with a manuscript draft of new and revised rules of the Supreme Court of the District of Columbia. The board of directors were authorized to have the proposed rules printed so that copies may be furnished members of the association. It is understood that after reasonable time shall have elapsed there will be a special meeting of the association to consider the rules as submitted with a view of making some recommendation thereon to the court and ultimately having the same adopted as a new edition of rules which will be the first general revision of rules in about ten years, and since the adoption of the Code which alone has caused many changes.

The manuscript is so arranged as to show new matter enclosed in heavy brackets, omission from old rules indicated by x x x and the number of the old rule enclosed in parenthesis following the new number.

A subject dealt with in the old law and equity rules, such as motion calendar, has been omitted from the latter.

The committee suggests a combined index for the law and equity rules instead of separate indexes as at present.

The following old rules are entirely omitted:

Law 7, 8, 9, 10, 12 section 3 to 6, 15 section 5, 21, 36, 38, 45, 46, 47, 48, 52, 62, 67, 69, 71, 72, 74, 78, 81, 86, 88, 92, 93, 94, 95, 97, 99, 100, 101, 102 and 103.

Equity 3, 5, 12, 18, 34, 54, 67, 68, 81, 84, 89, 101, 102 and 104.

The law rules are reduced in number from 117 to 85 and the equity rules from 105 to 75.

Among the most important changes made may be noted the following:

#### LAW RULES.

Automatic continuations of term as to any particular cause until bill of exceptions is settled, action on motions for a new trial, vacate judgment, set aside decree, etc.

Committee on admissions increased to nine members, three to be appointed annually. Members who have served two years ineligible for re-appointment until after one year. Members of the bar of the Supreme Court of the United States no longer to be admitted on motion.

Applicants for admission to bar as students to pay admission fee to clerk of the court who shall pay expenses of committee on admissions as well as for the services of the committee out of "admission to bar fees." Clerk's account of this fund to be annually audited by the auditor.

Rule provides caption to forms and pleadings. Captions to forms set out in different rules being therefore omitted.

No application to sue as poor person to be granted unless supported by an affidavit of the facts on which based.

When recovery less than court's jurisdiction judgment shall be without costs "unless the court shall in its discretion otherwise order."

Premium on corporate surety paid by fiduciaries to be allowed and taxed as part of costs and the rule fixes a schedule of such allowances.

Prohibiting the soliciting by representatives of surety companies in the court room during sitting of the court.

Makes principles of the 73d Rule applicable to appeal in landlord and tenant cases from J. P.

Allow service by parties or attorneys in certain cases and provides how service shall be made and proof thereof.

Copy of every pleading at law or in equity subsequent to the original declaration or bill, motions not grantable, of course, and of all other papers or documents used in a case, notice of which to the opposite party is required, etc., is to be furnished in two days by the party filing it to the opposite party.

Notice to plead no longer required.

Requires with a demurrer a statement of the matters and not merely some substantial matter of law.

Upon overruling demurrer or sustaining same leave to plead over or to amend in ten days automatically provided without action of the court in this regard.

Any person interested in a proceeding as grantee or transferee may, on motion, etc., be allowed to prosecute or defend.

Requires entry on motion calendar, in addition to matters heretofore, of hearings as to sufficiency of pleas, objections for want of parties, exceptions to answers or auditor's reports, etc.

Matters on said calendar to be heard on motion day or such other time as the court may on such day designate.

Form of notice of such hearing provided (shortening the present practice).

Motions for commissions to take depositions on interrogatories shall specify the names and addresses of the witnesses.

Upon the filing of depositions in clerk's office same may be published by the clerk.

A shorter form of commission to take depositions and commissioners return thereto is provided. This is to overcome the criticism of the form now in use by the Court of Appeals in *Accident Asso. v. Dudley* (15 Apps. D. C., 477).

Proof of the signing or endorsing of written instruments sued on or pleaded by way of set-off shall not be required unless such signing or endorsing be denied by affidavit filed with the plea of defendant or with the replication, to the plea of set-off, of the plaintiff.

Where verdict has been set aside or jury failed to agree and the case stands again for trial before the same justice, he of his own motion may, or at the request of either party, *shall* transfer it for retrial before another justice.

Every bill of exceptions shall be prepared by counsel for the party tendering it. If not settled before the jury retire counsel tendering it shall give two days' notice in writing to opposing counsel of the time at which it is proposed to submit the same to the court to be settled, and shall also at least eight days before the time designated in such notice present to opposing counsel a copy of the bill of exceptions so proposed to be settled. Said exceptions shall be submitted to the court within thirty-eight days after judgment shall have been entered in the cause, unless the court shall upon motion in writing and for cause shown, extend the time for the submission thereof. If counsel can not agree the bill of exceptions shall be settled by the justice who presided at the trial, in which case he shall be attended by counsel on both sides as he may direct.

The payment by or on behalf of either party in any action or proceeding of any fee to the jury is prohibited.

Neither the jury nor any member thereof shall, while serving or upon being discharged, make any present to the court in which such jury is or was in attendance, or to any of the officers or attaches thereof.

For cause shown upon motion in writing, and after notice thereof to the plaintiff, the court, in its discretion, may enter any cause at law or in equity dismissed for want of prosecution.

A motion to vacate a judgment entered by default of defendant must be filed within ten days after entry of judgment and not before the expiration of the term as is provided by the present rule.

A judgment or money decree when unsatisfied may, for cause, without notice be satisfied by the payment into the registry of the court of such sum of money as the court may direct and sufficient to satisfy the same.

To the present rule for the preparation of a transcript on appeal is added this clause: "The caption, of any paper, judgment, order, or decree entering into said transcript, except the first, shall be omitted."

Authorizes appellant, within ten days of settling of bill of exceptions or giving bond in an equity cause, to file with the clerk to be used as a part of the transcript of record on appeal copy or copies of a declaration, demurrer, pleas, and bill of exceptions, bill in equity, answer, amendments, exhibits, auditor's report, testimony, and depositions, provided copy is plainly typewritten and free from interlineations. Copy so filed shall not be included by the clerk in his charge for copying and making the transcript.

Advertising by direction of the court per agate

line two and one-sixth inches in width shall not exceed, one time, fifteen cents; two times, twelve and one-half cents for each time; three or more and less than ten times, ten cents each, and ten or more times nine cents each.

The court shall appoint three members of the bar, to be known as Committee on Rules, who shall consider matters referred to it, and, from time to time, make report. All proposed changes in the rules, excepting when otherwise directed, shall be in writing, addressed to the court in general term, and be referred by the clerk without further order to said committee.

#### EQUITY RULES.

Return and appearance days are abolished.

The law rules shall govern the practice in the equity courts so far as applicable and not inconsistent with law and the equity rules.

Parties suing in equity shall be designated as plaintiffs and counsel shall be designated as attorneys.

Directions to the clerk for preparation and calendaring of causes to be by *precipe*, and order book abolished.

The clerk will have power to prove bonds or undertakings directed by the court or required by the rules, to enter decrees *pro confesso*, to pass orders *nisi* (in the form prescribed by the rule) for the ratification of sales, and with the consent of both sides to issue commissions to take testimony.

Decrees *pro confesso* and orders *nisi* made by the clerk to be entered in the equity minutes at the end of the proceedings of that or the last day on which proceedings were had by the court.

Rules formerly specifying two weeks or fourteen days have been amended to specify ten days.

New form of the writ of subpoena provides that the defendant shall enter his appearance on the tenth day after service and not at the next rule day as now provided.

Service on the husband for the wife when both are parties is omitted from the old rule.

The writ of subpoena when served shall be returned on the tenth day after service, but if defendant be not found, on the tenth day after issuance.

Alias subpoenas when not served shall be returnable on the next rule day occurring twenty days after issuance.

The caption of bills shall contain not only the names of the parties but also suitable indications of the capacity in which they sue or are sued. The introductory part of the bill shall contain the name, place of abode, capacity in which parties sue or are sued, and if any are infants or under other disabilities shall so state and form is provided.

The clause in the rule permitting plaintiff to withdraw his replication and amend which required him to show among other things, namely: "And could not with reasonable diligence have been sooner introduced into the bill," is omitted from the old rule.

The defendant served with a subpoena must appear on or before the tenth day after service and not the next rule day as present rule.

When *pro confesso* is passed against the defendant the court may, after the expiration of twenty days make final decree and not await the next ensuing term as the present rule provides, and

such decree shall become absolute unless within ten days motion is made to vacate it (the old rule provides at same term).

The affidavit in support of a demurrer or plea that it is not interposed for delay, upon cause shown after notice, may by leave of the court be made by the agent or attorney of the defendant.

The defendant shall make answer in twenty days after entering his appearance (and not at next rule day).

All matters of defense in bar of or to the merits of the bill which might be set up by plea in bar, or by plea and answer in support thereof when required because of matters set forth in the bill to avoid or repel the bar or defense, may be made by answer, and the answer for this purpose need contain only such matters as are necessary in such plea or plea and answer in support thereof.

The answer shall be divided into paragraphs numbered as in the bill and each paragraph shall bear the same number as that of the bill to which it applies.

Unless within ten days after exceptions to an answer have been filed the defendant files an amended answer the plaintiff shall set the exceptions for hearing on a motion day not more than ten days thereafter.

Plaintiff shall file general replication within ten days after notice, by service of a copy, of the filing of the answer and upon failure the bill may be dismissed.

Taking of testimony shall be completed in ninety days, allowing forty-five days to the plaintiff in chief, thirty-five days to the defendant and ten days to the plaintiff in rebuttal; provided if either party shall conclude before the expiration of his time and notify the opposite party the time of the latter shall begin to run from such notice. The court for cause on motion of either party after notice may enlarge or diminish such time allowance.

Every petition for a rehearing shall be filed within ten days after final decree if appeal lies to Court of Appeals, otherwise within twenty days (the old rule requires the petition to be filed in the same term in the first instance and within the next term in the second instance).

Mistakes in decrees are authorized to be corrected on written motion in lieu of formal petition and the words "before an actual enrollment thereof" are omitted from the old rule.

The party having a case referred to the auditor is required to bring the same to his attention within ten days and not on or before the next rule day as in the old rule.

The evidence taken before the auditor shall be returned with his report and considered a part thereof.

The auditor on the day on which he files any report or account shall give notice to each attorney by postal card to that effect. Proof of sending such notice not necessary to ratification of report.

Exceptions to auditor's report shall be filed in fifteen days, and not one month as heretofore, provided such time may be enlarged fifteen days in the discretion of the court.

Affidavits in support of application for injunction or ne exeat are permitted to be filed after the bill or petition has been filed, provided copies are served at least two days before hearing of the application.

Copy of petition for divorce is permitted to be

sent by mail by the plaintiff's attorney or the clerk (the old rule provided by the clerk only).

The provision in the old rule for divorce where the defendant is proceeded against by publication that the testimony must be filed at least thirty days before the case is placed on the calendar is omitted (as in such cases the court is required to appoint counsel to defend).

When land is sold under decree the allowance to a tenant for life shall be three times the allowance in lieu of dower to a widow of the same age (the old rule retained fixes the allowance in such a case to the widow).

Permits a trustee or other persons selling under decree of court to append the name of the auctioneer to the advertisement (present rule prohibits this, but such inhibition has fallen into disuse).

The court may with or without cause shown immediately ratify a sale reported by a trustee, or pass an order nisi thereon for such length of time and requiring publication, or without publication, as the court may determine.

Whenever it shall appear that a fund in the hands of a receiver, trustee, committee, or other fiduciary will remain undistributed for a period exceeding ninety days from the receipt thereof by him, he shall, within thirty days after such receipt, report to the court in writing, under oath, the amount of such fund, when and in what name deposited, and the period for which it will probably remain undistributed, and the court may, thereupon, make such order with respect to the disposition thereof as to it shall seem proper.

#### ADMIRALTY RULES.

Several minor changes are provided in order to make these rules consistent with the changes made in the other parts of the rules.

#### PROBATE RULES.

The law and the equity rules shall govern the practice in the Probate Court so far as applicable and not inconsistent with law and the probate rules.

Neither the caveator or his attorney shall be appointed sole or joint collector pending the trial of a caveat except by express consent of the opposing party unless it shall appear to the court that such appointment is necessary to the protection of the estate.

No decree based upon notice by publication "of application for probate of will" shall be passed unless the petitioner or his attorney file an affidavit showing that twenty days before the application for such decree he mailed a copy of the publication to the absent party or has been unable to ascertain his postoffice address.

Notification of the trial of issues shall be returnable on the day fixed for the trial and be served at least ten days before the trial.

The order of publication of notice of trial of issues provides for "the substance" and not a copy (in full) of the issues to be appended to the order of publication.

To a party outside of the jurisdiction who shall not have been personally served with the original citation or notification or voluntarily appeared, notice of the trial of issues, when practicable, shall be given by mailing him a copy of the next above mentioned order at least ten days before the trial, proof of which may be the affidavit of the party or his attorney of such mailing or by

causing a copy of the publication to be served by an adult person and his service to be proved by the affidavit of such parson or by the written admission of the party served (old rule required letter to be mailed by registry and the registry receipt to be filed with the affidavit).

A petition for the sale of real estate to pay debts must designate specifically the real estate owned by the decedent, and the part thereof desired to be sold.

#### JUSTICE OF THE PEACE RULES.

The undertaking or appeal bond required by the Code when delivered to the justice within the time prescribed by sections 31 and 35 shall be effectual when and if approved within ten days from the day of judgment.

Repeal J. P. Rules, 22 (covered by Code, 76).

Add the following new rules:

After the garnishee answers he may give notice to the opposite party thereof, and if such opposite party does not join issue within ten days the garnishee shall be entitled as of course to judgment in accordance to his answer.

The provisions of 1557 and 1558 of the Code, dealing with replevin are made a rule applicable to justice of the peace (this permits a defendant to have an inquiry by the justice and give bond for the goods replevined pending the trial).

J. P. R. 26 is amended so as to require the same fees for an alias as an original summons or copy thereof.

The committee in their statement say that believing all printed forms used in the clerk's office not set out in the Code should be in the rules or all omitted and that the former will be of greater convenience they have endeavored to include all forms prescribed by the court in the manuscript rules as reported.

The committee concludes:

"In the location of the rules we have arranged subjects in a progressive order from the commencement to the end of a suit. Necessarily exceptions had to be made, for example, to locate the 73d Rule in its logical place and yet to retain the old number."

The several parts of the new rules are designated as follows: Part one, Law Rules; two, Equity Rules; three, Admiralty Rules; four, Probate Rules; and five, J. P. Rules.

It is understood that the rules if adopted are so arranged that they can be bound as a complete volume to include the J. P. Rules or the latter bound separately as may be desired in each case.

**Master and Servant—Contract for Employment.**—An employer authorized to terminate a contract of employment in case he desired to enter into a combination with other manufacturers held bound to exercise good faith in terminating the contract under such provision. *Fuller v. Downing*, 104 N. Y. Supp., 991.

**Master and Servant—Contract of Employment.**—Where a merchant contracts with a salesman for a year at a fixed salary, and thereafter refuses to perform the contract unless the salesman will accept a commission on sales, the salesman is not required to accept such change that his earnings might diminish the damages from the breach of contract. *Americus Grocery Co. v. Roney (Ga.)*, 58 S. E. Rep., 462.

#### Court of Appeals of the District of Columbia.

AMERICAN HOME LIFE INSURANCE COMPANY OF WASHINGTON, D. C., ET AL.,  
APPELLANTS,

v.

THOMAS E. DRAKE.

INSURANCE; ASSESSMENT COMPANIES; ANNUAL STATEMENTS; TAXATION.

1. The provisions of section 647 of the Code, requiring the filing and publication of annual statements by insurance companies, etc., doing business in this District, apply only to companies organized without the District and seeking to do business therein, and do not apply to corporations organized under the laws of this District for the purpose of transacting the business of life, sick benefit, and accident insurance.
2. The provisions of section 650 of the Code, relating to taxation of insurance companies, and requiring the payment of one and one-half per cent of the net premium receipts, do not apply to assessment companies.

No. 1765. Decided January 8, 1908.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, 25,802, sustaining a demurrer to a bill for an injunction. Reversed.

Mr. HENRY DAVIS for the appellants.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decree of the Supreme Court of the District of Columbia sustaining a demurrer to appellants' bill to restrain appellee, as superintendent of insurance, from taking action against them under section 648 of the Code for not complying with the provisions of sections 647 and 650 of the Code.

Each of the appellants is duly incorporated under the laws of the District of Columbia for the purpose of transacting the business of life, sick benefit, and accident insurance, and for several years has been actually engaged "in such business, issuing to its members policies or certificates, agreeing to pay benefits or sums of money to be realized by assessments levied upon members, and not otherwise."

Appellee contends that the provisions of sections 647 and 650 of the Code apply to appellants; while appellants contend that the only provisions of the Code applicable to them are found in section 653. The various sections involved are found in subchapter 5, entitled "Insurance Companies."

Section 646 ordains that the superintendent of insurance shall "keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association or order . . . doing business in the District;" and that "before any such insurance company, association, or order shall be licensed to do business in the District, it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officer of the State, Territory, or nation where such company or association was organized; . . . said superintendent shall have the power to

make such rules and regulations, subject to the general supervision of the Commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District."

We think these provisions were intended to apply solely to companies organized without the District, and seeking to do business within the District. If such companies are entitled to do business where organized and comply with local requirements, they may be licensed to do business here.

Section 647 reads as follows:

"The said superintendent shall furnish, in December of each year, to every company or association hereinbefore mentioned, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice-president, and secretary or assistant secretary, or if a foreign company by its manager or proper representative within the United States, showing its true financial condition as of the next preceding thirty-first day of December, which shall include a classified statement of its assets and liabilities on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked."

The words, "to every company or association hereinbefore mentioned," refer to companies or associations mentioned in the preceding section, to which reference has been made, and clearly were intended to embrace only companies organized without the District and seeking to do business within the District.

Section 650 reads as follows:

"Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to one and one-half per centum of said premium receipts of the last preceding calendar year. In lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections six hundred and fifty-four and six hundred and fifty-five; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per

centum per month shall be charged against said company, which, together with said taxes, shall be collected before said company shall be allowed to resume business."

It will be noticed that section 647 embraces only the companies or associations theretofore mentioned, while section 650 embraces "every insurance company and association doing business in the District of Columbia." The purpose of the requirement in section 650 that a statement shall be furnished of the net amount of premium receipts, losses paid, and expenses incurred, is to provide a basis for taxation, and the section ordains that "all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March 1st of each year a sum equal to one and one-half per centum of said premium receipts of the last preceding calendar year."

Section 651 requires the superintendent of insurance to make an annual report to the Commissioners of the District.

Section 652 is entitled "Inquiries as to District Companies," and reads as follows:

"It shall be the duty of the said superintendent of insurance to ascertain whether the capital required by law for the charter of each insurance company or association organized under the laws of the District of Columbia has been actually paid up in cash and is held by its board of directors subject to their control, according to the provisions of their charter, or has been invested in property worth not less than the full amount of the capital stock required by its charter; or, if a mutual company, that it has received and is in actual possession of securities, as the case may be, to the full extent of the value required by its charter; and the president and secretary of such company or association shall make a declaration under oath to said superintendent, who is hereby empowered to administer oaths when hereby required, that the tangible assets exhibited to him represent bona fide the property of the company or association, which sworn declaration shall be filed and preserved in the office of said superintendent; and any such officer swearing falsely in regard to any of the provisions hereof shall be deemed guilty of perjury, and shall be subject to all the penalties now prescribed by law in the District of Columbia for that crime."

Section 653 is entitled "Assessment Companies," and provides:

"Insurance companies or associations transacting the business of life insurance on the assessment plan, organized under the laws of the District of Columbia or of any State of the United States, and doing business in said District, shall not be required to comply with the provisions of the next preceding section in regard to its assets; but such assessment companies or associations shall be required, as a condition of license to do business in said District, to file annually in the month of January with said superintendent a sworn statement setting forth that they are paying, and for the twelve months next preceding have paid, the maximum amount named in their policies or certificates of membership when and as the same become due and payable, and that one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued, and such other information as he may require. Such assessment companies or



associations shall also furnish said superintendent evidence that they hold an emergency or surplus fund as a guaranty for the payment of future death claims when the same is required by the charter or constitution of the company or association; and any such company or association licensed to do an insurance business refusing or neglecting to furnish such certificate shall have its license to do business in the District of Columbia revoked; but the provisions of this section shall apply only to associations transacting life insurance upon the assessment plan."

Section 646 imposes certain conditions upon companies organized without the District if they would be licensed to do business within the District. Section 652 requires the superintendent of insurance to carefully ascertain the condition of locally organized companies doing business within the District, but section 653 expressly provides that assessment companies shall be relieved from the requirement in section 652 in regard to assets. It will be observed that immediately following the clause of exemption in section 653 are found the conditions under which assessment companies may be licensed to do business within the District. They must file an annual statement that they are paying, and for the last year have paid, the maximum amount named in their policies, and that one "assessment upon their members is sufficient to pay the maximum amount for such certificate or policy issued," and such other information as the superintendent may require—that is, such other necessary information. It was not necessary to exempt assessment companies from the provisions of section 647, for the reason that section 647 was not intended to embrace, and does not embrace locally organized companies.

It being clear that the provisions of section 647 apply to companies organized without the District and doing business within the District, and the provisions of section 652 embrace "District companies," except assessment companies, and that the provisions of section 653 embrace assessment companies, the question next to be considered is whether the provisions of section 650 relating to taxation apply to assessment companies. Mutual fire insurance companies are expressly exempted from the provisions of this section, and all other companies are required to pay 1½ per centum of "the net amount of their premium receipts." Are assessments levied and collected for the sole purpose of paying benefits and defraying actual expenses of the association to be deemed "net premium receipts" within the meaning of this section? We think not. These assessment associations or companies are not conducted for the purpose of gain as are stock and mutual companies. In a stock company, of course, the capital is liable for the contracts of the company, and, if the enterprise be a profitable one, dividends are declared. In mutual companies the members are both the insurers and the insured, but the premiums exacted constitute the fund from which expenses and losses present and future are paid, and the residue, if any, represents the profits. It is to such companies, we think, that section 650 refers and not to assessment companies organized solely for mutual protection. The clause in section 653 requiring assessment companies to satisfy the superintendent of insurance that "one assessment upon their members is sufficient to pay the maximum amount for such certificate or policy

issued" indicates that assessments are here differentiated from net premiums. Net premiums, as here used, doubtless refers to that portion of the premium set aside to meet the present and future cost of insurance and is calculated upon the basis of mortality tables.

In ordinary insurance contracts, the contracts embraced in section 650, the premiums paid become the property of the insurer. It is the consideration which induces the insurer to promise to pay the insured or his beneficiary the sum named in the contract or policy. Assessment companies, however, are quite differently conducted. Each member when he joins the association obligates himself to contribute towards the protection of every other member, the consideration being every other member's promise to contribute towards his protection. The arrangement and classification of these various companies in the Code, and the language used concerning each, convince us that Congress did not intend to subject assessment companies to the provisions of section 650.

The decree appealed from must be reversed, with costs, and the cause remanded to the Supreme Court of the District of Columbia with directions to take further proceedings not inconsistent with this opinion. And it is so ordered.

Reversed.

James C. Carter's "Law: Its Origin, Growth, and Function."

The above book, by James C. Carter, has been recognized as a work of the first importance. The New York Times Saturday Review of Books makes the following comment upon it:

"It is an honor to American literature, as well as to the American bar, to have made such a contribution as this to the philosophy of jurisprudence. It is hardly hazardous to predict that this posthumous volume will prove to be an epoch-making work in the study of its subject. And we may well be moved to congratulate the memory of the late leader of the American bar upon having done in his retirement a work which promises to spread his fame wider and keep it longer than any forensic success he attained or could have attained in the active practice of the profession he so loved and so adorned."

Master and Servant—Risks Assumed.—A servant having left his work and undertaken to perform that of another, the master held not liable for an injury received while so engaged. *Patterson v. North Carolina Lumber Co.* (N. Car.), 58 S. E. Rep., 437.

Master and Servant—Injury to Servant.—A car dispatcher of an interurban electric railway company held under the facts a vice-principal and not a fellow-servant of conductors and motormen. *Edge v. Southwest Missouri Electric Ry. Co.*, (Mo.), 104 S. W. Rep., 90.

Master and Servant—Liability for Servant's Torts.—To knowingly place a drunken conductor armed with a pistol and of bad habits in charge of a street railway car held negligence as a matter of law. *Savannah Electric Co. v. Wheeler* (Ga.), 58 S. E. Rep., 38.

# Supreme Court of the United States.

OCTOBER TERM, 1907.

HENRY O. HOUGHTON, TRUSTEE, ET AL.,  
APPELLANTS,

v.

GEORGE B. CORTELYOU, POSTMASTER-  
GENERAL.

## RESTRAINING ORDER; UNDERTAKING; DAMAGES.

In a proceeding to enjoin the Postmaster-General from refusing to admit the publications of complainants to the mails as second-class matter, the court, on May 31, 1902, granted an order restraining the defendant as prayed in the bill "until further order, to be made, if at all, after a hearing," which was fixed for June 18, 1902, and an undertaking was filed by complainants, as required by Equity Rule 42, to make good to defendants any damages sustained by reason of the wrongful suing out of the injunction. No further order was made, or undertaking given, and on March 10, 1903, a perpetual injunction was granted. The decree was reversed by the Court of Appeals, and the bill directed to be dismissed; and this decree was affirmed by the Supreme Court of the United States on April 11, 1904. On the coming down of the mandate, the trial court dismissed the bill, but refused to assess damages and cancelled the undertaking. The Court of Appeals reversed the decree in so far as it refused to assess damages and entered a decree for \$6,880.88, the amount with interest stipulated as the difference between postage due at third-class rates, which defendant claimed the right to collect, and that paid as second-class rate between the date of the injunction and June 16, 1904, when mailing at second-class rates was discontinued. On appeal to the Supreme Court of the United States, it was held—

1. That the undertaking was authorized and given in pursuance of sec. 718, R. S. U. S., and should be construed accordingly.
2. That the decree granting a perpetual injunction necessarily superseded the restraining order, which expired by the limitation contained in its terms, and there was no further liability on the undertaking given only to secure that order.
3. That damages should be assessed only for the period from the date the bond was approved until March 10, 1903, the date of the decree awarding the perpetual injunction; and the decree of the Court of Appeals modified so as to include such damages only.
4. *Russell v. Farley*, 105 U. S., 433, distinguished.

No. 49. Decided January 20, 1908.

APPEAL from the Court of Appeals of the District of Columbia. Modified and affirmed.

Mr. HOLMES CONRAD and Mr. WM. S. HALL, for the appellants.

Mr. HENRY H. GLASSIE, for the appellee.

Mr. JUSTICE DAY delivered the opinion of the Court:

This case is here by appeal from the Court of Appeals of the District of Columbia. The case originated in an action brought against the then Postmaster-General (Mr. Payne) to compel him to enter and transmit certain publications of the complainants, Houghton, Mifflin & Company, as second class matter instead of third class as ruled by the Postmaster-General; and the bill prayed an injunction restraining the Postmaster-General from refusing to transmit them at second-class said rates. A restraining order was issued under the filing of the bill on May 31, 1902, in the taxes upon terms:

provided for in the complainant filing undertaking, as and six hundred equity rule 42, the defendant will be failure of any cured as prayed in the within-men-March first, as aforesaid further order, to be made, if at any shall be revoking, which is fixed for the 16th

day of June at ten o'clock A. M., 1902, of which take notice.

"By the court: A. B. HAGNER, Justice."

An undertaking was given in the following terms:

"George H. Mifflin, one of the complainants, and the American Surety Company of New York, surety, hereby undertake to make good to the defendants all damages by him suffered or sustained by reason of wrongfully and inequitably suing out the injunction in the above-entitled cause, and stipulate that the damages may be ascertained in such manner as the justice shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

GEORGE H. MIFFLIN.  
THE AMERICAN SURETY  
COMPANY, NEW YORK.  
By JNO. S. LOUD.

Approved 4 June, 1902. A. B. HAGNER."

No further hearing was had upon the application for a temporary injunction, and on March 10, 1903, the case was heard on the merits and the following injunction awarded:

"This cause, coming on to be heard upon the bill and the exhibits filed therewith, and on the papers filed in the cause and the proceedings had therein, was argued by counsel. On consideration thereof it is this 10th day of March, 1903, adjudged, ordered, and decreed—

"(1) That the complainants are entitled to have their publications entitled 'Riverside Literature Series' received and transmitted through the mails as mailable matter of the second class, as defined by the act of Congress approved March 3, 1879.

"(2) That the Postmaster-General be, and he is hereby, perpetually restrained from enforcing and continuing the cancellation of the certificate of entry set forth in paragraph six of said bill, and from refusing to receive said publication and transmit the same through the mails as mailable matter of the second class, in accordance with the provisions of said act of Congress approved March 3, 1879, and from denying to the complainants the receipt, entry, and transmission through the mails of their publication entitled 'Riverside Literature Series' as mailable matter of the second class, as defined by the act of Congress approved March 3, 1879."

An appeal was taken to the Court of Appeals of the District of Columbia, and on June 5, 1903, the decree of the Supreme Court was reversed and the case remanded to the court below, with directions to dismiss the bill. 22 App. D. C., 234; 31 Wash. Law Rep., 390. From that decree an appeal was taken to this court, and the decree of the District Court of Appeals was affirmed on April 11, 1904, 194 U. S., 88.

Upon receipt of a mandate of this court the District Court of Appeals issued its mandate, ordering the court below to dismiss the bill. The Postmaster-General moved the court to enter a decree upon the mandate of the District Court of Appeals, to dismiss the bill dissolving the injunction, and ascertain the damages by reason of the violation thereof. The District Supreme Court entered a decree setting aside its original decree, and dismissed the bill, and dissolved the injunction theretofore granted, but being of opinion

that, as matter of law, the complainants and sureties on the injunction bond given in the case were not liable to damages thereon, the motion for ascertainment of damages upon such undertaking was overruled and denied, and the injunction undertaking canceled and annulled.

From the part of the decree refusing to assess damages the Postmaster-General, Mr. Cortelyou, having succeeded Mr. Payne, appealed to the District Court of Appeals, where the order of the court below was reversed, and a decree directed against the appellant and the surety on the injunction bond for the sum of \$6,880.86, the amount with interest stipulated as the difference between postage due at third-class rate and that paid as second-class rate "between the date of the filing of the injunction herein and June 16, 1904, when such mailing at the second-class rate was discontinued." 27 App. D. C., 188: 34 Wash. Law Rep., 190. Thereupon appeal was taken to this court.

It is the contention of the appellants that the original undertaking being entered only for a temporary purpose, had spent its force, and that there is no liability thereon, notwithstanding the fact that the original decree granting a permanent injunction was reversed by the District Court of Appeals, which judgment was affirmed in this court.

The contention of the appellees is that the damages sustained by the Postmaster-General during the time pending this action was secured by the bond, and recovery may be had for the damages sustained, or, if not for the full amount, at least for the time from the granting of the restraining order until the final decree in the court of original jurisdiction.

The determination of the question involved depends upon the nature and character of the undertaking given. The restraining order issued in the case was authorized by section 718 of the Revised Statutes of the United States, which is as follows:

"Whenever notice is given of a motion for an injunction out of a circuit or district court, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion, and such order may be granted with or without security, in the discretion of the court or judge." Rev. St. U. S., sec. 718.

Under this section, originally passed June 1, 1872 (section 7, chapter 255, 17 Stat., 196), a restraining order with features distinguishing it from an interlocutory injunction was introduced into the statutory law. In the prior act of Congress of March 3, 1893 (1 Stat., 334, 335), it was provided in section 5: "Nor shall a writ of injunction be granted in any case without reasonable previous notice to the adverse party, or his attorney, of the time and place of moving for the same."

By force of section 718 a judge may grant a restraining order in case it appears to him there is danger of irreparable injury, to be in force "until the decision upon the motion" for temporary injunction. Thus by its very terms the section (718) does not deal with temporary injunctions, concerning which power is given in other sections of the statutes, but is intended to give power to preserve the status quo when there is danger of irreparable injury from delay in giving the notice required by Equity Rule 55, governing

the issue of injunctions. While the statutory restraining order is a species of temporary injunction, it is only authorized, as section 718 imports by its terms, until the pending motion for a temporary injunction can be heard and decided *Yuengling v. Johnson*, 1 Hughes, 607; s. c., 30 Fed. Cases, 866, Case No. 18,195; *Barstow et al. v. Becket et al.*, 110 Fed., 826, 827; *North American Land and Timber Co. v. Watkins*, 109 Fed., 101, 106; *Worth Mfg. Co. v. Bingham*, 116 Fed., 785, 789.

And the same view has been recognized in other jurisdictions having similar statutory provisions. "A temporary restraining order is distinguished from an interlocutory injunction, in that it is ordinarily granted merely pending the hearing of a motion for a temporary injunction, and its life ceases with the disposition of that motion and without further order of the court, while, as we have seen, an interlocutory injunction is usually granted until the coming in of the answer or until the final hearing of the cause, and stands as a binding restraint until rescinded by the further action of the court." 1 *High on Injunctions*, fourth ed., sec. 3.

Turning from a consideration of the authority conferred to the terms of the order, it will be seen that the judge acted under the terms of section 718. For the order of restraint is "until further order, to be made, if at all, after a hearing, which is fixed for the 16th day of June, at ten o'clock a. m., 1902, of which take notice." This is the order of which the defendant had notice and concerning which indemnity was required and given in the bond now in suit.

As we have noticed, no further undertaking was required of Houghton, Mifflin & Company after the restraining order issued in its favor. The Court of Appeals for the District said:

"But we do not think the bond ceased to be in force after the decree was entered making the injunction perpetual. The parties by their actions treated it as though it continued to apply. The appellant would, had any question been raised, have asked for a new bond, in which event the appellees doubtless would have conceded that the bond remained in force. When the main case was before this court, and later was taken to the United States Supreme Court, it was considered that the original undertaking was in force or a new one would have been required, one other than the supersedeas bond then given." 27 App. D. C., 196.

But we do not think the case can be decided upon conjecture as to what bonds might have been required. We must determine the case upon the liability of the principals and sureties on the bond which was actually given.

When the parties gave this undertaking, the court, exercising its discretion, had required that the restraining order should be upon condition that bond be given to secure the defendant against loss because of this temporary restraint.

It is true that the restraining order was, by its terms, to be in force until "further order," to be made, if at all, after hearing. Neither party brought on for hearing the pending motion for a temporary injunction. When the further order was made nothing was said of the restraining order. A new and permanent injunction in favor of the plaintiffs was granted. This decree necessarily superseded the restraining order, and it

expired by the limitation contained in its terms, and there was no further liability on the bond, given only to secure that order.

It is further contended by the appellants that they should be relieved from all liability on this bond, upon the principles laid down in *Russell v. Farley*, 105 U. S., 433. In that case the equity practice in the courts of the United States concerning security for injunctions was elaborately discussed by Mr. Justice Bradley, speaking for the court. It was held that the exercise of discretion involved in the decision of the court of original jurisdiction, in awarding or withholding damages, should only be reversed in clear cases. And examining the procedure in the case then in hand, with a view to ascertaining whether injustice had been done, the fact is shown that the injunction secured by the obligation given in that case had never been entirely dissolved; that it had never been decided that the complainant was not entitled to it, at least as to a portion of the property claimed by the parties suing out the injunction, and it turned out on the final hearing that as to more than one-half of the claim the injunction was properly issued. In course of the discussion the learned justice says:

"When the pledge [deposited by order of court] is no longer required for the purposes of justice, the court must have the power to release it and leave the parties to the ordinary remedies given by the law to litigants inter sese. Where the fund is security for a debt, or a balance of account, or other money demand, this would rarely be allowable; but in many other cases it might not infrequently occur that injustice would result from keeping property impounded in the court. On general principles the same reason applies where instead of a pledge of money or property a party is required to give bond to answer the damage which the adverse party may sustain by the action of the court. In the course of the cause, or at the final hearing, it may manifestly appear that such an extraordinary security ought not to be retained as a basis of further litigation between the parties; that the suit has been fairly and honestly pursued or defended by the party who was required to enter into the undertaking and that it would be inequitable to subject him to any other liability than that which the law imposes in ordinary cases. In such a case it would be a perversion, rather than a furtherance, of justice to deny to the court the power to supersede the stipulation imposed."

In the present case the court of original jurisdiction, the Supreme Court of the District, refused to assess damages upon the injunction bond, for what reason the record does not disclose. The District Court of Appeals, as we have seen, assessed damages for the entire period, during which it held the injunction to be in force. We do not think this case comes within the class outlined in *Russell v. Farley*, wherein the order of the trial court ought not to be disturbed upon principles of equity and in view of the superior knowledge of that court of the conduct of the parties in the course of the litigation.

In this case the Government and the appellees were in controversy as to the rate of postage to be charged upon a certain class of publications sent through the mail by the appellees. It is true that the Department's rulings for some years had been in favor of the contention of the appellees

as to the class to which this mailable matter belonged. When the Postmaster-General ruled to the contrary, and correctly, as has now been held in the District Court of Appeals and in this court, the publishers applied to the court for an injunction to continue them in their original right to receive this lower rate of postage pending the litigation which they had begun, with a view to testing the right of the Government to make this demand. The court entertained the suit and awarded a restraining order, but upon the condition that if the publishers continue to receive the lower rate postage for which they contended, notwithstanding the ruling of the Postmaster-General, the Government was to be indemnified against loss should it turn out that its contention was right and that of the complainants wrong. The publishers accepted this condition, and gave the bond to secure their right to continue sending the mailable matter in controversy at the old rate, pending the further order of the court.

As a result of the final decision in this court it turned out that the Postmaster-General was right, and that the Government was justly entitled to the additional rate of postage as ruled by the Postmaster-General. The result of the decision established not only the right of the Government to receive the additional postage, pending the controversy, but also established the fact that the publishers had received a very considerable amount of service from the Government in carrying the publications through the mails at a rate less than it was entitled to charge.

We do not perceive in this condition of affairs, any room for the application of the doctrine laid down in *Russell v. Farley*, which permits a court to relieve from liability on an injunction bond. The result of this litigation leaves no doubt as to the rights of the parties, and the Government's right to avail itself of the security given to secure payment of the postage which it was legally entitled to charge.

It is not necessary for us to decide whether further and other security might not have been required under Equity Rule 93, or otherwise, as a condition of continuing the injunction after final judgment. What we determine is that this undertaking was authorized and given in pursuance of section 718, Revised Statutes, and should be construed accordingly. The District Court of Appeals should have sustained the order of the Supreme Court of the District, declining to assess any damages on the bond, except for the period from the time the bond was approved until March 10, 1903, the date of the decree in the court of original jurisdiction.

The judgment of the Court of Appeals giving damages for the entire period of the litigation, and until the legal rate of postage was paid by appellants, should be modified so as to include only damages for the period covered by the restraining order, as above stated, and as so modified.

Affirmed, costs in this court to be equally divided.

Bankruptcy—Discharge of Principal in Bond.—A surety on an injunction bond given in a suit to restrain the enforcement of a judgment is not released by discharge of his principal in bankruptcy. *Stull v. Beddeo* (Neb.), 112 N. W. Rep., 315.

**Bills and Notes—Notes Payable in Installments.**—A note payable in installments, and providing that the whole amount shall become due on the failure to pay any installment, is valid as a note. *Martin v. Jesse French Piano & Organ Co.*, (Ala.), 44 So. Rep., 112.

**Carriers—Duty Toward Railway Mail Clerk.**—A railway mail clerk held a passenger on the mail car, to whom the railroad company owes the same duty that it would a passenger for hire.—*Decker v. Chicago, M. & St. P. Ry. Co.* (Minn.), 112 N. W. Rep., 901.

**Carriers—Injury to Goods.**—In an action against an express company for injury to plaintiff's goods in transportation, the doctrine exempting connecting carriers from liability for negligence other than their own held not applicable. *Sabbatino v. Snow's U. S. Sample Exp. Co.*, 104 N. Y. Supp., 1004.

**Master and Servant—Assumed Risk.**—An employee does not assume an extraordinary risk existing by the fault of his employer, unless such employee knows or comprehends it or it is so plainly observable that he will have been charged with notice thereof. *Place v. Grand Trunk Ry. Co.* (Vt.), 67 Atl. Rep., 545.

**Accord and Satisfaction—Part Payment.**—Where defendant was indebted to plaintiff in a certain amount, and sent plaintiff a check for a part of the amount, plaintiff, in collecting the check, was not bound to accept it in full on account, although the check so stated. *Roach v. Warren, Neely & Co.* (Ala.), 44 So. Rep., 103.

**Bankruptcy.—Effect of Adjudication.**—A bankruptcy adjudication brings all the bankrupt's nonexempt property into custodia legis the same as when taken on execution or attachment, subject to the qualification that it is appropriated to debts subject to the same equities as in the hands of the bankrupt. *In re Youngstrom*, U. S. C. C. of App., Eighth Circuit, 153 Fed. Rep., 98.

**Landlord and Tenant—Adverse Possession.**—Sale in foreclosure under mortgage given by holder of title acquired by adverse possession against a landlord held valid as against purchaser at sheriff's sale of unexpired term of lease. *Townsend v. Boyd* (Pa.), 66 Atl. Rep., 1099.

**Benefit Societies—Misrepresentation.**—A benefit certificate held forfeited because of misrepresentations in the answer to questions in the application and declared therein to be warranties. *Loehr v. Supreme Assembly of Equitable Fraternal Union* (Wis.), 112 N. W. Rep., 441.

**Master and Servant—Defective Appliances.**—The duty of a master to furnish his employees reasonably safe appliances and to use ordinary care to keep them in repair does not make the master an insurer of the safety of its servants. *Southern Ry. Co. v. Carr*, U. S. C. C. of App., Fourth Circuit, 153 Fed. Rep., 106.

**Master and Servant—Duties of Servant.**—Where the duties of a servant are specified in reasonable rules, of which the servant has knowledge, his nonobservance at a time when they are capable of observance is negligence. *St. Louis & S. F. R. Co. v. Dewees*, U. S. C. C. of App., Eighth Circuit, 153 Fed. Rep., 56.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Alexander H. Bell, Wm. E. McKenney, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Rover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of January, 1908. MARY E. ROVER, 49 I st. N. W.; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,978. Admn. [Seal.] 5-St

E. H. Thomas and Jas. Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.  
In re Extension of Fourth Street Northeast.  
District Court, No. 714.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved January 22d, 1908, entitled "An act to extend Fourth street northeast," have filed a petition in this court praying the condemnation of the land necessary for the extension of Fourth street northeast northward from its present termination near Franklin street extended, through the Frederick Rose tract, to Hamlin street extended, in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of Fourth street northeast and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages plus the costs of this proceeding upon the land abutting upon the said street to be extended and also upon all other pieces or parcels of land which the jury may find will be benefited by the extension of the said street. It is, by the court, this 31st day of January, A. D. 1908, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 4th day of March, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and on six regular days in The Washington Evening Star, The Washington Herald, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 4th day of March, A. D. 1908; It is further ordered, that a copy of this notice and order be served by the United States marshal or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia, and upon the tenants and occupants of the same, before the said 4th day of March, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 5-St

**Legal Notices.**

**B. F. Leighton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret E. Rankin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of January, 1908. ARCHIBALD M. McLACHLEN, 2800 Ontario Road; FIRMEN R. HORNER, 1300 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,880. Administration. [Seal.] 5-3t

**Joseph J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John M. Clapp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of January, 1908. ANNA P. CLAPP, 1024 Vermont ave.; JOSEPH J. DARLINGTON, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,167. Administration. [Seal.] 5-3t

**McNeill & McNeill, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Driggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of January, 1908. MARY EDDY DRIGGS, 2236 Mass. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,997. Administration. [Seal.] 5-3t

**R. Ross Perry & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Georgeanna Dishman, sometimes known as Georgeanna Bowles, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of January, 1908. JULIA BUTLER, 1938 Waverly Place N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,890. Administration. [Seal.] 5-3t

**T. K. Hackman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of David K. Hackman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of January, 1908. TURNER K. HACKMAN, Staunton, Va.; WM. J. FRIZZELL, 42 V st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,901. Administration. [Seal.] 5-3t

**Legal Notices.**

**William B. Reilly, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Estate of William Dacy, Deceased.**  
 No. 14,778.

**ORDER OF PUBLICATION.**

The object of the petition filed in this cause is to sell the real estate owned by the decedent for the payment of debts, the petition being filed by the administrator. On motion of the administrator it is, this 29th day of January, A. D. 1908, ordered that the unknown heirs and next of kin of William Dacy, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published at least once a week for three successive weeks [Seal] in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 5-3t

**E. H. Thomas and Jas. Francis Smith, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

**In Re the Extension of Seventh Street, Sixth Street, and Franklin Street Northeast, in the District of Columbia.** District Court, No. 718.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved January 9, 1907, entitled "An act for the extension of Seventh street and Franklin street northeast, and for other purposes," have filed a petition in this court praying for the condemnation of the land necessary for the extension of Seventh street northeast southward from its present termination near its intersection with Channing street, on a line parallel with the Metropolitan Railroad, to Rhode Island avenue, Sixth street southward to Central avenue, and also Franklin street northeast from Central avenue eastward to the Metropolitan Railroad and westward from its present termination between Fifth and Sixth streets to Fourth street northeast, and also to straighten the western line of Seventh street between Hamlin and Irving streets northeast, in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of said Seventh street and Franklin street northeast, and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages plus the cost of this proceeding upon the land abutting upon the said streets to be extended and also upon all other pieces or parcels of land which the jury may find will be benefited by the extension of the said streets. It is, by the court, this 31st day of January, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 28th day of February, A. D. 1908, at 10 o'clock A. M., and to continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Herald, and The Washington Times, newspapers published in the said District, commencing at least twenty days before the said 28th day of February, A. D. 1908; it is further ordered that a copy of this notice and order be served by the United States marshal or his deputies upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia and upon the tenants and occupants of the same before the said 28th day of February, A. D. 1908. [Seal] By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 5-1t

Justice blanks of every description for sale at this office.



**Legal Notices.****SECOND INSERTION.**

Chas. A. Jaquette, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John S. Anderson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. CHARLES A. JAQUETTE, Sec'y's Office, Treas'y Dept. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,973. Administration. [Seal.] 4-3t

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Henry P. Sanders, Deceased.

No. 14,956. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, it is ordered this 23d day of January, A. D. 1908, that Annabel Sanders (minor), Carrie Louise Sanders, William Bennet Sanders, Harry Douglass Sanders, Leander Edwin Sanders, Archie D. Sanders and Ilette B. Sanders, and all others concerned, appear in said court on Monday, the 24th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein

[Seal] mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-3t

Levi H. David, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Camille Jacobs et al., Complainants, v. Irving Jacobs, Defendant. Doc. 58. Eq. 28,475.

On consideration of the report of Levi H. David, trustee, and the affidavit accompanying the same, filed herein, showing offer from Henry M. Adams, in the sum of \$218.90, in cash, for the equity in the 16.79-100 ft. front on 14th st., extended, next north of the south 16.76-100 ft. of lot 14, by depth of 187 ft. and parallel to the south side of said lot 14, in block 36, Columbia Heights, improved by premises 8123 14th st., said real estate being subject to a deed of trust of \$6,000 at 6%, said Adams agreeing to pay all taxes, and cancel all interest, due upon said property, it is by the court, this 23d day of January, 1908, ordered, adjudged and decreed that said offer be, and same is hereby ratified and confirmed, unless cause to the contrary be shown on or before February 24th, 1908. Provided a copy of this order be published in The Law Reporter once a week for three successive weeks prior to said last mentioned

[Seal] date. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 4-3t

M. J. Keane, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Connor, sometimes known as John O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. MICHAEL J. KEANE, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,917. Administration. [Seal.] 4-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

J. J. Darlington, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Wm. H. Yerkes, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 10th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 21st day of January, 1908. HANNAH A. YERKES, JNO. K. YERKES, WILLIAM H. YERKES, Jr., by J. J. Darlington, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,127. Administration. [Seal.] 4-3t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Richard Young, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 14th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of January, 1908. AMERICAN SECURITY & TRUST CO., by James F. Hood, Secretary, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,143. Administration. [Seal.] 4-3t

Gordon & Gordon, Solicitors

In the Supreme Court of the District of Columbia.

Lizzie B. Gladmon v. Florence Edith Cross et al.  
Equity No. 27,298.

The object of this suit is to sell for partition the property of which Celia E. V. Beall died seized, namely, part of lot 4, in square 556, in the city of Washington, in the District of Columbia. On motion of the complainant it is, this 21st day of January, A. D. 1908, ordered that the defendants, Florence Edith Cross, Evelyn E. Copeland, and Marshall Elmer Carrier, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Wash-

[Seal] ington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 4-3t

J. J. Darlington, Attorney  
In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.

In re Estate of Jennie H. Scott, Deceased.  
No. 14,851. Admn. Doc.

ORDER OF PUBLICATION.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Albert F. Fox and Joseph J. Darlington, it is ordered this 23d day of January, A. D. 1908, that Jennie McElroy Brown, Andrew J. McElroy, Sarah McElroy, Gordon W. Boyd, John Boyd, Jemima Alexander, the unknown heirs at law and the unknown next of kin of said deceased, of Clinton McElroy, and of Sherman Boyd, and all others concerned, appear in said court on Wednesday, the 26th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of Probate Court. 4-3t



**Legal Notices.**

**Birney & Woodard, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Loring Chappel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. ARTHUR A. BIRNEY, 602 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,957. Administration. [Seal.] 4-3t

**Chas. J. Murphy, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles L. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. EDWARD V. MURPHY, 2511 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,988. Administration. [Seal.] 4-3t

**C. Clinton James, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. MARGARET A. GIBSON, care of C. Clinton James, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,950. Administration. [Seal.] 4-3t

**Hamilton, Colbert, Yerkes, & Hamilton, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. White, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of January, 1908. HARRY M. WHITE, Greencastle, Franklin Co. Pa.; MICHAEL J. COLBERT, 412 5th st., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,811. Administration. [Seal.] 4-3t

**Kappler & Merillat, Attorneys**  
In the Supreme Court of the District of Columbia.  
Frances S. Nichols v. George W. Nichols.  
No. 27,315.

The object of this suit is to obtain a decree a mensa et thoro by complainant against defendant, custody of their two children Eugene M. and George A. for complainant, and an injunction against defendant from molestation of complainant and her two children by defendant. On motion of the complainant, it is this 3d day of January, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy.

Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 4-3t

**Legal Notices.**

**W. T. Fitz Gerald, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of January, 1908. JOHN ROBINSON, No. 5 North Hill Court N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,794. Administration. [Seal.] 4-3t

**Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Neale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. FLORENCE NEALE, 1818 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,968. Administration. [Seal.] 4-3t

**William L. Pollard, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Julia Kane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. WILLIAM W. QUEEN, 1310 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,563. Administration. [Seal.] 4-3t

**Thompson & Laskey, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Frost, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. JOHN E. LASKEY, 844 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,848. Administration. [Seal.] 4-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Kay McCammon, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 23d day of January, 1908. ORMSBY McCAMMON, AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Wm. A. McKenney, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,164. Administration. [Seal.] 4-3t

**Legal Notices.****THIRD INSERTION.**

Irving Williamson, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Zera Luther Tanner, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 5th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of January, 1908. HELEN B. TANNER, Executrix, by Irving Williamson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,118. Administration. [Seal.] 8-3t

F. H. Stephens, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret F. Buckelew, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. HENRY COTHEAE EVANS, 918 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,798. Administration. [Seal.] 8-3t

Jas. A. Burkart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Eldridge J. Smith, Deceased.

No. 18,718. Administration Docket. —

Application having been made herein for letters of administration c. t. a. d. b. n. on said estate, by Wilbur L. Wright, it is ordered this 14th day of January, A. D. 1908, that Andrew C. Smith, Theodore C. Smith, Fanny Roscovitch, Nora Smith, Frederick Smith, and Henry Smith, all of Takoma, Wash.; Mary Burns, Homer, Minn.; and Maud Hayes, of Lewisburg, Pa., and all others concerned, appear in said court on Wednesday, the 19th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. [Seal] GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-3t

Annual Report of the Law Reporter Printing Company, of Washington, D. C.

In compliance with section 617, Code, District of Columbia, we, the undersigned, a majority of the board of trustees of The Law Reporter Printing Company, of Washington, D. C., do hereby certify that the capital stock of the said corporation is \$18,000, all of which has been paid in, and that there are no existing debts. M. W. MOORE, Vice-President and Acting President; RALPH P. BARNARD, H. RANDALL WEBB, CHAPIN BROWN, EDWARD H. THOMAS, A. A. BIRNEY, Trustees.

Subscribed and sworn to by M. W. Moore, Vice-President and Acting President, before me, a notary public in and for the District of Columbia, this 15th day of January, 1908. ALBERT HARPER, Notary Public, D. C. [Seal.] 8-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

Geo. Francis Williams, Solicitor

In the Supreme Court of the District of Columbia.  
William H. McCray, Complainant, v. John R. Tucker et als., Defendants. Equity No. 27,538.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to lots twenty (20), twenty-one (21), and twenty-two (22), in Henry A. Willard's recorded subdivision of square one hundred and fifty-one (151), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 17th day of January, 1908, ordered that the defendants, John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred D. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William F. P. Tucker, John R. Bryan, Della Page, John K. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Perronneau Brown, Virginia C. Braxton, St. George Tucker, Coalter, Ellis Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the defendants, the unknown heirs, devisees, or assignees of such of the above-named defendants that are dead, and the unknown heirs, devisees, or assignees of Thomas Tudor Tucker, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in five successive weeks prior to said return day [Seal.] In The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-3t

J. J. Darlington, Solicitor

In the Supreme Court of the District of Columbia.  
Frances W. Irelan v. Harriet L. Kendall et al.  
No. 27,436. Equity.

The object of this suit is to sell for partition all the property of which the late George H. B. White died seized, namely: Lot 7, subdivision of square 144; lot 20, square 250; lot 8, block 39, subdivision north grounds of Columbia University; lot 8, block 7, Cleveland Heights; lots 29 and 30, block 4; lots 4, 5, and 6, block 6; lots 13 and 14, block 12; lots 6 and 7, block 13, subdivision of part of "Trinidad," undivided half interest in west 25.90 feet of lot 8, square 85; undivided twentieth interest in parts of "Lucky Discovery" and "Pretty Prospect," described in deed recorded in Liber 1474, folio 194, of the land records of the District of Columbia, all being in the District of Columbia. On motion of the plaintiff, it is this 18th day of January, A. D. 1908, ordered that the defendant, Harriet L. Kendall, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy this order be published once a week for three successive weeks prior to said day in The Washington [Seal] Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

Gittings &amp; Chamberlain, Solicitors

In the Supreme Court of the District of Columbia.  
William Wheeler Smith, Complainant, v. Amzi L. Barber et al., Defendants. Equity, 27,500. Docket 50.

The object of this suit is to annul a certain deed, as to the complainant in this cause, from Amzi L. Barber, et ux. to John J. Albright, dated July 17, 1908, and recorded March 14, 1907, in liber 3063, at folio 61 et seq. of the land records of the District of Columbia, conveying lots 3, 4 and 5 in block 29 of John Sherman's trustees' subdivision of Columbia Heights, and, after the sale of said property pursuant to the terms of a decree passed in Equity No. 26,951, to empower and direct the trustees appointed therein to apply balance of proceeds to the satisfaction of certain other judgments obtained by the complainant against the defendant, Amzi L. Barber. It appearing to the court that the summons issued herein against the defendant, John J. Albright has been returned "not to be found," and the non-residence of the said defendant having been proved by affidavit to the satisfaction of the court, on motion of the complainant, it is, this 8th day of January, 1908, ordered that the defendant, John J. Albright, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter and The Washington Post.  
HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer Asst. Clerk. 8-St

J. J. Darlington, Attorney

In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.

In the Matter of the Estate of Claas Denekas, Deceased. No. 13,406. Admn. Doc. —.

Gustav H. Schulze and Ernest A. Sellhausen, executors, having reported a sale to James S. Fraser for \$1,100 in cash, of a part of the Villa Flora property owned by the above-named Claas Denekas, in the District of Columbia, known as a part of the tract of land called "The Girl's Portion," and more particularly described in the report of the said executors filed in the above entitled cause, the land so reported sold comprising about five hundred and ninety-five thousandths (.595) of an acre, more or less, it is by the court this 7th day of January, A. D. 1908, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of February, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said day in The Wash-

[Seal] ington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 8-St

E. L. White, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas Hiland, late of the District of Columbia deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of January, 1908. FRANK FREMONT SMITH, 1808 Mass. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,920. Administration. [Seal.] 8-St

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cullam Wyatt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. WILLIAM L. POLLARD, 608 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,129. Administration. [Seal.] 8-St

**Legal Notices.**

Fred B. Rhodes, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Julia S. Marks, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. SAMUEL H. MARKS, 149 You st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,983. Administration. [Seal.] 8-St

Wm. L. Pollard, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Fletcher, late of the District of Columbia, deceased. All persons having claims against the deceased, are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of January, 1908. FRANKLIN I. A. BENNETT, 1214 Linden st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,655. Administration. [Seal.] 8-St

B. F. Leighton, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza T. Ward, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of January, 1908. MINNIE CHAPIN, Herndon, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,848. Administration. [Seal.] 8-St

**FOURTH INSERTION.**

Carlisle &amp; Johnson, Solicitors

In the Supreme Court of the District of Columbia.

David Paul Burleigh Conkling, Complainant, v. New York Life Insurance and Trust Company et al., Defendants. No. 27,483. In Equity.

The object of this suit is to secure a conveyance in fee simple to the complainant, David Paul Burleigh Conkling, of the real estate situated in the city of Washington, District of Columbia, known and designated in the records of the surveyor's office of the District of Columbia, in liber 27 at folio 175, as lot numbered one hundred and thirty-nine (139) in Sarah B. Conkling's subdivision of lots numbered sixty-two (62) and sixty-three (63) of A. P. Fardon's subdivision of lots in square numbered one hundred and thirty-four (134) which the complainant in his bill claims that Sarah B. Conkling agreed to convey to him and the consideration for which conveyance the complainant claims to have paid to said Sarah B. Conkling in her lifetime. On motion of the complainant, it is this 10th day of January, A. D. 1908, ordered that the defendants, Della Mason Caldwell, Sarah B. C. Moller, Natalie Alberta Caldwell, James Caldwell, Natalie Burleigh von Ohnesorge, Paulina Feodora von Ohnesorge, Lebrecht Leopold von Ohnesorge, and Nathaniel Conkling, and every of them, do cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Re-

[Seal] porter and The Washington Herald before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 2-4t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - FEBRUARY 7, 1908

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### Anti-Trust Law—Liability of Labor Organizations for Damages for Boycotts.

The decision of the Supreme Court of the United States in the case of *Loewe et al. v. Lawlor et al.*, announced on Monday, February 2, 1908, is of exceptional interest and importance as affecting the labor organizations of the country. The decision, in effect, holds that a boycott by a labor union against products entering into interstate commerce is a conspiracy in restraint of trade as defined in the Sherman anti-trust law and therefore illegal, and the object or victim thereof entitled under the provisions of that act to recover three times the amount of damages sustained. The suit was brought in the United States Circuit Court for Connecticut to recover damages in the sum of \$60,000, and as incident to the proceeding the property of defendant members of the latter's union and other labor organizations to the value of \$180,000 was attached. The Circuit Court sustained a demurrer to the declaration, and the case was taken to the Circuit Court of Appeals for the Second Circuit, which certified the question to the Supreme Court. The opinion of that court, from which there was no dissent, was announced by Chief Justice Fuller, and reverses the judgment below. In the course of the opinion it is said:

"In our opinion the combination described in the declaration is a combination 'in restraint of trade or commerce among the several States' in the sense in which those words are used in the act, and the action can be maintained accordingly, and that conclusion rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts in that regard the liberty of a trader to engage in business. The combination charged falls within the class of restraints of trade aimed at compelling third parties

and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes; and there is no doubt, that to quote from the well-known work of Chief Justice Erle on trades unions, 'at common law every person has individually, and the public has also collectively, a right to require that the course of trade should be kept free from unreasonable obstruction.' But the objection here is to the jurisdiction because, even conceding that the declaration states the case good at common law, it is contended that it does not state one within the statute. Thus, it is said that the restraint alleged would operate to entirely destroy the defendant's business, and thereby include interstate trade as well; that physical obstruction is not alleged as contemplated, and that the defendants are not themselves engaged in interstate trade. We think none of the objections is tenable, and that they are disposed of by previous decisions of this court."

### DECISIONS BY THE COURT OF APPEALS.

#### Liquor License—Hotels—Mandamus.

In *Griffin et al. v. United States ex rel. Le Cuyer*, the appeal was from an order of the court below granting a writ of mandamus to compel the excise board of this District to issue to the relator a barroom license in a hotel conducted by him. The Court of Appeals, in an opinion by Mr. Justice Robb, affirms the ruling of the court below, holding that, under the circumstances of the case, the board was without authority to refuse the license.

#### Abortion—Evidence—Previous Conviction of Crime.

In *Thompson v. United States*, the appeal was from a judgment of the court below entered upon a verdict finding appellant guilty of having caused and procured a miscarriage by the insertion of an instrument into the womb of a pregnant woman, etc. The defendant testified in his own behalf, and on cross-examination was questioned, over objection by his counsel, as to whether he had not previously been tried for a like offense, the first trial resulting in a verdict of murder, which verdict was set aside, and on the second trial a verdict of manslaughter was returned, which verdict was also set aside and the case nolle prossed. The Court of Appeals, in an opinion by Mr. Chief Justice Shepherd, holds that this was error, and reverses the judgment.

#### Sunday Law—Maryland Act of 1725, Ch. 15, Sec. 10, No Longer in Force.

In *District of Columbia v. Robinson*, it was sought to review a judgment of the Police Court sustaining a demurrer to an information charging the defendant with working on Sunday in violation of the provisions of act of Maryland of 1725, ch. 16, sec. 10. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, filed January 21, 1908, affirms the judgment, holding that the act of Maryland referred to is to be regarded not only as obsolete but as repealed by implication.

Decisions in a number of appeals in patent cases were also filed.

## Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, APPELLANT,  
v.  
HARLAN & HOLLINGSWORTH CO., A CORPORATION, APPELLEE.

CONTRACTS; DAMAGES FOR DELAY; LIQUIDATED DAMAGES; PENALTIES; WAIVER.

1. Courts of law possess no right or power to give relief in cases of contract where a court of equity would not exercise a similar power.
2. Parties may stipulate in advance that a certain sum shall be the damages which one shall forfeit to the other for failure to perform the conditions of a valid contract; and especially is this true when the damages to be sustained are uncertain in amount and can not readily be ascertained.
3. A contract between plaintiff and the Commissioners of this District for the construction of a fireboat required its completion by a time stated, and provided that in event it was not so completed the contractor should forfeit to the District \$25 for each working day he should be in default, as fixed and liquidated damages suffered by reason of such default and not by way of penalty, and that such sum might be deducted from any moneys due under the contract. When the boat was finally completed and accepted the contractor was 132 days in default, and the Commissioners deducted \$3,300 from the contract price. In an action by the contractor to recover this amount, the trial court instructed the jury that the District was only entitled to deduct the amount of any actual damage sustained by the delay. Held, that this instruction was erroneous, and that the provisions of the contract, fixing the damages for delay at \$25 per day, were binding on the parties.
4. A receipt given the contractor by the chief engineer of the District fire department, not authorized or confirmed by the Commissioners, held not binding on the District, especially where the subsequent conduct of the parties showed that such receipt was not intended as a release of the contractor nor an acceptance of the boat by the District.
5. In order for the acceptance of work contracted for by one of the parties to relieve the other party from liability for delay in the performance of his part of the contract, such acceptance must be unconditional and with full knowledge of the default.
6. The acceptance of the boat by the Commissioners of the District on condition that defects should be remedied held not to be a waiver of the right to deduct the stipulated damages for the delay.

No. 1762. Decided January 14, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,296, in an action for recovery of an alleged balance due under contract. Reversed.

Mr. E. H. THOMAS and Mr. H. P. BLAIR for the appellant.

Mr. J. H. HAYDEN and Mr. GEO. W. DALZELL for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an action of covenant brought in the Supreme Court of the District of Columbia for the recovery of a balance claimed to be due upon a contract for the construction of a boat, designed for use as a part of the equipment of the fire department of the city of Washington. The contract in question was made on December 31, 1904, by which the appellee, hereinafter referred to as the plaintiff, agreed for the sum of \$49,739 to furnish and deliver to appellant, defendant below, the fireboat in question complete within one hundred and fifteen working days from December 3, 1904. The material provisions of this contract essential to the present inquiry are set forth in the following portions of the instructions to bidders

and general stipulations which were made a part of the contract.

"Failure of the contractor to commence the work and to prosecute it in a satisfactory manner and at a rate of progress, sufficient in the opinion of the Commissioners, to insure the vessel's completion within the time named in the contract, will be authority for the Commissioners, in their discretion, to suspend the contractors from the work and employ other parties to complete it, or to employ additional labor to assist in its completion, or to annul the contract."

"The Commissioners may, if in their opinion that such action would be to the advantage of the District, grant the contractor an extension of time, but in that event the contractor shall forfeit to the District of Columbia the sum of twenty-five dollars for each working day that he shall be in default, which sum of \$25 per day is hereby agreed upon as fixed and liquidated damages that the District of Columbia will suffer by reason of such default and not by way of penalty. And the said Commissioners may and shall deduct and retain said sum out of any moneys that may be due or become due under this agreement."

Owing to some changes subsequently agreed upon, the time for the completion of the boat was extended by a supplemental contract to May 25, 1905, which contract contained the following provisions:

"Therefore, said contract time is hereby extended an additional period of thirty (30) working days, said extended time to be without imposition of the forfeit of \$25, per day stipulated in said contract, as liquidated damages."

"It is further agreed by and between the parties hereto, that this supplement shall in no wise impair, destroy or affect the original contract, or the price stated therein, or the provisions thereof, except as herein stated, but is to be deemed and taken as a supplement thereof."

The boat was built by the plaintiff company at Wilmington, Del., and was to be delivered at a point, within the District of Columbia, to be designated by the Commissioners of the District. The plaintiff notified the Commissioners that the boat would leave Wilmington for Washington on June 2, 1905, and inquired what provisions would be made for her formal acceptance on arrival at Washington, and to whom she should be delivered. But one of the Commissioners, Mr. Biddle, was in the city when this communication was received. The secretary of the board notified the plaintiff in the following letter that the chief engineer of the fire department would be at plaintiff's works on June 2d to accompany the boat to Washington.

EXECUTIVE OFFICE,  
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,  
WASHINGTON, June 1st, 1905.

Mr. S. K. SMITH, Assistant Treasurer of the Harlan & Hollingsworth Corporation, Wilmington, Delaware.

DEAR MR. SMITH: The Commissioners have your letter of the 31st ultimo inquiring what provision is made for the formal acceptance of the "Fire-fighter" upon her arrival in Washington. Commissioner Macfarland and Commissioner West are out of the city and the latter will not return until tomorrow morning, but Commissioner Biddle instructs me to state that the chief engineer of the

fire department will be at your works and probably accompany the boat to her destination. Any instructions he may give on that point will be satisfactory to the Commissioners.

Very respectfully,

W. TINDALL, Secretary.

On this trip two tests of the boat were made, one on the Delaware River and one on the Potomac. On the arrival of the boat in Washington on June 5th, the following receipt was given to the agent of the plaintiff company:

WASHINGTON, D. C., June 5, 1905.

Received of Harlan & Hollingsworth Company the steamer "Firefighter" at our wharf in Washington, D. C., in good order.

WILLIAM T. BELT,

Chief Engineer, Fire Dept.

It appears that during the tests which were made on the way to Washington, the attention of the plaintiff's agent was called to the defective condition of the nozzles and the starboard pump. On June 23d, subsequent to the arrival of the boat in Washington, Commissioner Macfarland told the vice-president of the plaintiff company that the Glazier nozzles installed in the boat would have to be replaced by Woodhouse nozzles. On July 3, 1905, the Board of Commissioners passed the following order:

"Ordered, that the fire boat 'Firefighter,' constructed under the appropriation made April 27, 1904, by the Harlan & Hollingsworth Corporation of Wilmington, Delaware, is hereby accepted, in view of the recommendation of Messrs. Tams, Le Moine and Crane, designers and supervisors, and of the chief engineer of the fire department, supplemented by the report of the machinist of the fire department, upon the condition 'that the contractors shall complete the work on the pumps and appurtenant machinery and substitute the required monitor pipe nozzles, so as to meet fully the requirements of the specifications, and that until this is done to the satisfaction of the Commissioners, on the recommendation of Tams, Le Moine and Crane, and the chief engineer of the fire department, the Commissioners retain out of the balance due the Harlan & Hollingsworth Corporation, namely, \$16,185.39, \$5,000, besides the ten (10) per cent amounting to \$3,730.44 retained from the three payments already made.'

"Official copy furnished Harlan & Hollingsworth Corporation, Wilmington, Delaware, by order, William Tindall, secretary."

Before the making of this order, the plaintiff company had arranged to put the pumps in order, and had assured the defendant that the Woodhouse nozzles had been ordered, as appears from the following letter:

HARLAN & HOLLINGSWORTH COMPANY,  
WILMINGTON, DEL., July 21, 1905.

Mr. HENRY B. F. MACFARLAND,  
Commissioner of the District of Columbia,  
Washington, D. C.

DEAR SIR: We beg to acknowledge receipt of yours of the 20th inst., regarding the nozzles for the fireboat "Firefighter."

The writer begs to inform you personally that in his statement to you on June 23d, that the Woodhouse nozzles had been ordered, he acted in good faith. The matter referred to in your letter is having our personal attention, and we will be glad after your investigation to let you know in

what manner the error occurred, and in which of our departments.

Regretting extremely the delay that you have been caused, we are,

Very truly yours,

PERSIFOR FRAZER, JR.,

Vice-President.

The boat was finally accepted by the Commissioners on October 31, 1905, one hundred and thirty-two working days after the expiration of the supplemental contract. In the final settlement the Commissioners deducted from the contract price of the boat as liquidated damages under the contract \$25 per day for one hundred and thirty-two days, a total of \$3,300. It was for the recovery of this amount with interest that this action was brought in the Supreme Court of the District. Judgment was rendered for the full amount, and from that judgment defendant appealed to this court.

When plaintiff's attention was called to the defective condition of the pump and nozzles, it proceeded without protest or complaint to make good the defect. It thereby admitted, by implication at least, its failure to complete the boat as required by the conditions of the contract. That such failure on the part of the plaintiff can be attributed to the understanding of the parties may be clearly inferred from the theory upon which the cause was tried in the court below. Both parties in the trial proceeded upon the assumption of a default on the part of the plaintiff to complete the boat within the time specified in the contract. That there was delay and that the delay was due to the plaintiff seems to have been conceded. The issue presented to the jury was practically narrowed down to one of damages. The plaintiff, in its prayer for instructions to the jury, contended that, under the contract, only actual damage could be assessed, and that inasmuch as no actual damage had been shown to have been sustained by the defendant, the verdict should be for the plaintiff for the full amount claimed. The defendant, in its prayer for instructions, insisted that, under the contract, the damages had been fixed by the parties at \$25 per day and the defendant was justified, through its Board of Commissioners, in deducting from the final payment the amount sued for in this action. The trial court adopted the view of the plaintiff and instructed the jury as follows:

"In the case of delay in the delivery of the 'Firefighter,' subsequent to May 25, 1905, caused by the plaintiff's fault, the Commissioners of the District of Columbia were authorized and entitled to deduct from the price stipulated to be paid for said steamer and to withhold payment to the plaintiff of an amount equal to the actual damage sustained by the District of Columbia in consequence of such delay. The Commissioners were not entitled to make any deduction as liquidated damages at the arbitrary rate of \$25 per day, irrespective of the actual damage sustained. If you find from the evidence that the District of Columbia sustained no actual damage on account of such delay, you shall render a verdict for the plaintiff for the sum of \$3,300, with interest from the date of delivery. If, however, you find from the evidence that such delay caused the District of Columbia actual damage, you shall ascertain its amount, and if found to be less than \$3,300, your verdict shall be for the plaintiff and for a sum



equal to the difference between \$3,300 and the amount of the damage, together with interest on the difference from the date of delivery."

Counsel for plaintiff contends that the contract provides for the imposition of a penalty and not liquidated damages and, therefore, the District of Columbia was only entitled to deduct from the contract price the amount of damages actually sustained in consequence of plaintiff's delay in delivering the boat. In England, before the passage of the Statute of Forfeitures and Penalties, 8 and 9 William III, in actions at law on a contract where the performance of the conditions were secured by a penalty, the recovery was for the full amount of the penalty. Courts of equity, however, could relieve against fraud or mistake. The effect of this statute was to furnish the same relief in a court of law as could be obtained in a court of equity. In *Sun Printing and Publishing Association v. Moore*, 183 U. S., 661, the court, speaking through Mr. Justice White, said: "Of course, courts of common law, merely by reason of the statute of 8 and 9 William III, did not acquire the power to give relief in cases of contract, where a court of equity would not have exercised a similar power. Now, courts of equity do not grant relief in cases of liquidated damages—that is, cases 'when the parties have agreed that, in case one party shall do a stipulated act, or omit to do it, the other party shall receive a certain sum as the just, appropriate, and conventional amount of the damages sustained by such act or omission.' Story Eq. Jur., sec. 1318. And, as long ago as 1768, Lord Mansfield, in *Lowe v. Peers*, 4 Burr., 2225, said: 'Courts of equity will relieve against a penalty upon a compensation; but where the covenant is to pay a particular liquidated sum, a court of equity can not make a new covenant for a man; nor is there any room for compensation or relief.' . . . Whilst the courts of the United States, in actions at law, undoubtedly possess the power conferred upon the courts of common law by the statute of 8 and 9 William III, and whilst recognition of such power was embodied in the judiciary act of 1789, reproduced in section 961, of the Revised Statutes, the duty of such courts to give effect to the plainly expressed will of contracting parties is as imperatively necessary now as it was at common law after the adoption of the English statute." It will be observed that at the present time, neither in England nor in this country, do courts of law possess the right or power to give relief in cases of contract where a court of equity would not exercise a similar power. The rights of the parties to this action can rise no higher in a court of law than they would in a court of equity, and courts of equity in the absence of fraud or mistake, do not grant relief in cases of liquidated damages.

There is nothing to prevent the parties from stipulating in advance that a certain sum shall be the damages, which one shall forfeit to the other for failure to perform the conditions of a valid contract. Especially is this true where the damages to be sustained are uncertain in amount and can not easily be ascertained. In the case at bar the actual amount of damage that might accrue, because of the failure of the plaintiff to complete the fireboat within the time stipulated, would be difficult to anticipate. The loss that might be sustained by the absence of an important part of the equipment of the fire department, such as

this boat, might be inestimable. The fact that a fire did not occur during the period of delay is immaterial. We are here concerned with the conditions that confronted the parties when the contract was made, and the clause providing for damages in case of delay was inserted. It was the possible damage that might accrue from delay that governed the parties in fixing in advance the amount that should be regarded as settled and liquidated damages. It is not our province, in the absence of fraud or mistake, to set aside the plain terms of this contract and undertake to make for the parties a better contract than they made for themselves. Improvident and unwise contracts are often made, and where the parties act independently, free from fraud or other reason that would call for the intervention of a court of equity, and the intention can be drawn with reasonable clearness from the written instrument, it is not the duty, or within the power, of courts of law to place a different construction upon the contract than was intended by the parties when the agreement was originally made. Where the amount agreed upon as liquidated damages is out of all proportion to any actual damages that could possibly accrue, courts of equity may grant relief; but a court of law has no right to construe a contract contrary to the intention of the parties therein expressed, in order to make for them a better or more equitable contract than they made for themselves at the inception of the transaction, when both parties could view equally the advantages and disadvantages that would probably arise.

Whether the sum agreed to be paid as damages for the failure to perform the conditions of a contract shall be treated as liquidated damages or as a penalty is to be drawn from the subject-matter of the agreement, the meaning and intent of the parties as expressed in the contract, and the terms used to express that intent. In determining this question courts will not be bound by the exact language of the contract. The contract may use the terms "forfeit" and "penalty," and yet be construed to call for liquidated damages, and likewise the words "liquidated damages" used in a contract may be held to mean a penalty. In order to determine whether the amount stipulated in a contract to be forfeited for nonperformance should be construed as a penalty or liquidated damages, an examination should be made of the whole contract, the sum stipulated, the ease or difficulty of measuring the pecuniary loss that would be sustained by the breach, the subject-matter of the contract, and the proportion that the amount stipulated bears to the entire consideration. Cases might arise where it would be difficult to ascertain exactly what the parties meant by a stipulation in a contract looking to the compensation to one party for the breach of the other. But the contract in the case at bar presents no such difficulty. The intention of the parties to this contract can not be misunderstood. It is stated that "the contractor shall forfeit to the District of Columbia the sum of twenty-five dollars for each working day that he shall be in default, which sum of \$25 per day is hereby agreed upon as fixed and liquidated damages that the District of Columbia will suffer by reason of such default and not by way of penalty." In the face of such language it would be absurd for a court to impute to the parties an



intention different from that which the language used so clearly implies. Besides, the plaintiff has raised no issue as to the sum named in the contract being out of proportion to the amount involved in the transaction, and no fraud or mistake is alleged or facts stated that would justify this court in holding that the contract should be reformed.

It is contended by counsel for plaintiff that the defendant by the receipt of the engineer of the fire department of June 5th and the order of the Commissioners of July 3d waived all right to retain liquidated damages. The receipt given by the engineer of the fire department upon the arrival of the boat in Washington can not be construed into either a release of the plaintiff from the obligations of its contract or an acceptance of the boat by the defendant. Even if the engineer could be regarded as the agent of the defendant, his agency in this instance would be limited to the performance of such acts as legally attached to his office, or as he had been specially authorized to perform by order of the Commissioners of the District of Columbia. No such order had been made delegating authority to him to accept, on behalf of the defendant, the boat in question, and we are not advised of any official prerogative that would empower him to act in the premises. The engineer was sent to Wilmington by the order of Commissioner Biddle, not by any official order of the Board of Commissioners, to accompany the boat to Washington. The record does not disclose any subsequent order of the board confirming or approving the action of the engineer in giving this receipt. It will be observed, therefore, that no authority was conferred upon the engineer to either receipt for or accept the boat. That this receipt was intended to operate as either a release of the plaintiff, or an acceptance by the defendant, is negated by the subsequent action of the parties. Defendant's agents continued to insist upon the completion of the boat in accordance with the terms of the contract. Plaintiff, without protest or complaint, proceeded to procure and install proper machinery to replace the parts that had proved defective. There seemed to have been a mutual agreement that default had been made in complying with the terms of the contract, and neither party apparently recognized in the receipt anything that would operate to limit or change the conditions of the contract. We are, therefore, of the opinion that the receipt can not be held to have any binding effect upon the defendant.

The order of the Commissioners of July 3d, however, presents a more difficult question. Usually the acceptance of work contracted for by one of the parties relieves the other party of liability for delay in the performance of his part of the contract, but such acceptance must be unconditional and with full knowledge on the part of the accepting party of any default on the part of the other party. Here the acceptance was upon the express condition that the plaintiff should "complete the work on the pumps and appurtenant machinery and substitute the required monitor pipe nozzles, so as to meet fully the requirements of the specifications." This order must be interpreted in connection with the conditions then existing. The evidence unmistakably discloses that both before and after the date of this order repeated efforts were made by the plaintiff, with the assistance of the employees of the

defendant, to put the machinery in proper order, and that this was not finally accomplished until near the close of October. The order in no way changed or varied the terms of the contract. By it the Commissioners simply said we will accept the boat upon condition that you comply fully with the terms of your contract. The condition upon which acceptance was based was the complete fulfillment of the contract. The order imposed no conditions different from those imposed by the contract. It laid upon the plaintiff no greater obligation than was provided for in the contract. If the order had in any way interfered with the plaintiff in carrying out its part of the contract, or imposed upon plaintiff additional burdens, this would have furnished an excuse for nonperformance. *Peck v. United States*, 102 U. S., 64. The boat was sent here from Wilmington, Del., presumably in a completed condition. On arrival the employees of plaintiff left it on the hands of the Commissioners of the District. Instead of the Commissioners interfering in any way with the plaintiff or its agents or employees, the evidence discloses that the officers and employees of the defendant, at large expense to the defendant, took care of the boat during the period of delay, and not only kept the engines fired and the boat in condition to test the machinery that was being replaced, but assisted the employees of the plaintiff in making the changes necessary to enable plaintiff to comply with the requirements of its contract. To hold that, by this conduct or by the order of July 3d, the defendant waived its right to deduct the stipulated damage for the period of delay, would violate every equitable consideration that should govern the conduct of the parties.

The judgment is reversed with costs, and the cause remanded with instructions to the court below to proceed in conformity with this opinion.

**Master and Servant—Injury to Third Persons.**—Where the employees of a railway company engaged in moving cars on the track of a lumber company are not under the control of the lumber company, the railway company is responsible for their negligence. *Fitzpatrick v. Michigan Cent. R. Co.* (Mich.), 112 N. W. Rep., 915.

**Accident Insurance—Payment of Premium.**—The provision of an accident insurance policy that it should not take effect unless the premium is paid prior to an accident will not defeat recovery, where the accident occurs within the time during which credit for the premium has been extended. *Cornell v. Travelers' Ins. Co. of Hartford*, 104 N. Y. Supp., 999.

**Benefit Societies—Vested Rights.**—A member of a beneficial association held without right to benefits, except such as had accrued prior to the amendment of the association's by-laws as would preclude the association from adopting an amendment changing the conditions on which members should be entitled to benefits. *Maxwell v. Theatrical Mechanical Ass'n.*, 104 N. Y. Supp., 815.

**Trustee—Duty to Collect Assets.**—In *Matter of Reinboth*, 19 Am. B. R., 15, it has been held that a trustee in bankruptcy is bound to use due diligence to get in the assets of the estate and may be charged with the value of assets lost by failure to discharge such duty.

## Supreme Court of the District of Columbia.

CHARLOTTE HAWKINS

v.

METROPOLITAN LIFE INSURANCE COMPANY.

LIFE INSURANCE; FAILURE TO ATTACH COPY OF APPLICATION TO POLICY; EVIDENCE OF PHYSICIANS; WAIVER.

1. Under section 657, Code, D. C., a correct and complete copy of the application for insurance must be attached to the policy, and where this provision is not complied with the insurer can make no defense on account of anything contained in or omitted from such application.
2. An application for insurance was made in four parts A, B, C and D. A, which was signed by insured, stated his age, occupation, present insurance, name of beneficiary, etc. B was the certificate of the agent of the insurance company. C was a statement by insured as to disease and treatment, etc., and warranting the statements therein made. D was a paper signed by the medical examiner. Only the part marked C, containing the warranties, was copied on the back of the policy and given the insured. In an action on the policy, held that the parts marked A and C were both required to make a complete application, and under section 657 of the Code both should have been attached to the policy when it was delivered to the insured; that the failure of the insurance company so to do precluded it from making defense on account of anything contained in or omitted from such application, and it could not defend by showing that the statements contained in the part marked C were false.
3. Effect of waiver by insured, in his application for insurance, of privilege as to testimony of physician.

No. 49,357, Law. Decided January 10, 1908.

HEARING in an action on a policy of insurance, tried by the court without a jury. Judgment for plaintiff.

Mr. W. G. GARDINER and Mr. E. R. HOPEWELL for the plaintiff.

Messrs. BERRY & MINOR for the defendant.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case an action was brought before a justice of the peace for \$220, with interest from December 12, 1906, on a policy of insurance, issued on the life of Edward Hawkins, the plaintiff, his mother, being the beneficiary named therein.

Judgment was given for the defendant, and the plaintiff appealed to this court.

The parties, by a stipulation filed herein, waived a jury trial, and the case was tried before the court without a jury.

It is claimed by the plaintiff that there is no correct and complete copy of the application attached to the policy, and that for such reason the defendant can make no defense on account of anything contained in or omitted from such application, under section 657 of our Code.

The plaintiff also objects to the testimony or statement of Dr. Thomas, because inadmissible under our statute.

The defense made by the insurance company is that the party insured stated in his application, as a warranty, that he was in sound health, and had not been under the care of any physician for two years prior to that time, and had never been treated in any dispensary, hospital, or asylum; and that if Dr. John D. Thomas is competent to testify, that his testimony will show that the insured was treated by him in the Emergency

Hospital, and in Georgetown Hospital, from July, 1905, to December, 1905, and for aneurism of the arch of the aorta, and that the insured died from this last named disease.

The questions of law arising under these facts seem to be two. First, is the application printed on the back of the policy the whole application required by the statute in such case? If so, does the clause in the application, whereby the insured waives the provisions of any statute making the physician's knowledge privileged, or forbidding him to testify, make the testimony of Dr. Thomas competent and allowable in this case?

The language of the application in this respect is as follows:

"I expressly agree and stipulate that in any suit on the policy herein applied for, any physician who has attended me, or may hereafter attend me, may disclose any information acquired by him in any wise affecting the declarations and warranties herein made, and I hereby waive the provisions of any statute making the physician's knowledge privileged, or forbidding him to testify."

Section 657 of the Code of this District provides that:

"Each life insurance company, benefit order, or association, doing a life insurance business in the District of Columbia, shall deliver with each policy issued by it a copy of the application made by the insured, so that the whole contract may appear in said application and policy; in default of which no defense shall be allowed to such policy on account of anything contained in or omitted from such application."

The application seems to have been made in several parts. One marked A, signed by the insured, states that he is single, states his occupation, his present insurance, date and place of birth, his residence, age and race, the name, age, and occupation of the beneficiary, and her relation to the insured, the amount of insurance, the plan of insurance, the premium, etc., and the words "I hereby apply for the above-described policy," are printed just above the signature of the insured.

The next part marked B is the certificate of the agent, stating what he has to say with reference to the application.

The part marked C is the statement by the applicant with reference to disease and treatment, etc., and warranting the statements therein made, the printed words at the beginning being:

"I hereby apply to the Metropolitan Life Insurance Company for insurance. To induce the said company to issue a policy, and as consideration therefor, I warrant and agree, on behalf of myself and of any other person who shall have or claim interest in any policy issued under this application, as follows:"

This part contains the statement that the applicant has not been under the care of any physician within two years.

Part D is a paper signed by the medical examiner.

The application is dated March 20, 1906, and the part marked C, containing the warranties, and signed by the insured, is the only part of the application that is copied on the back of the policy and given to the insured.

The policy on its face contains the words:

"Metropolitan Life Insurance Company, in consideration of the statements in the printed and

written application, for this policy, a copy of which is hereby annexed, all of which are hereby made warranties and part of this contract, and of the payment of the premium mentioned in the schedule on the back thereof, on or before each Monday, hereby agrees, etc."

The parts of the application marked A and B are preceded by these general words:

"Form 2. Application to the Metropolitan Life Insurance Company, incorporated by the State of New York, part A to be filled out by agent, and signed by the life proposed, part B to be filled out, and signed by the agent."

Part C is headed by the words:

"This side of the form is to be completed, except as to the signature of life proposed, by the medical examiner only."

These words are omitted from the copy on the back of the policy, but with that exception it is conceded that the part C is fully and correctly copied thereon, and this heading I hold to be an immaterial matter, not necessary to be attached to the policy.

The part C contains this paragraph, over the signature of the party insured:

"I agree that as to each and every one of the foregoing paragraphs where nothing is written after the word 'except,' I warrant the statement therein contained without exception."

This paragraph evidently refers to the eleven sections of the application contained in part C, wherein the word "except" occurs, and where declarations of fact are made.

Another paragraph is as follows:

"And I further declare, warrant, and agree, that the representations and *answers* made above are strictly correct and wholly true, that they shall form the basis and become part of the contract of insurance if one be issued, and that any untrue *answers* will render the policy null and void, and that said contract shall not be binding upon the company unless upon its date and delivery the insured be alive and in sound health."

The word "*answers*" in this paragraph occurs twice, and evidently does not refer to either of the eleven sections in part C, because there is no question in part C to *answer*, but the said sections all purport to be voluntary declarations of certain facts made by the insured without any question being asked. The words in this paragraph, "*representations and answers made above*," apply equally to the questions asked and answers given in part A, the whole application consisting of the parts A, B, C, and D, being all written and printed upon one sheet of paper, following each other in the order named, A and B being on the first page, C on the second page, and B on the third page.

Part A must necessarily be a part of the contract of insurance, for it contains the important facts which enable the company to know the character of the risk to be assumed, and the answers to questions which the insured is required to state truly over his own signature as the basis for the contract.

I do not think that parts B and D constitute any portion of the contract between the insured and the defendant company, but part A and part C are both required to make a complete application, and both necessarily enter into the contract and under the provisions of section 657 of the

Code, both of these parts should have been delivered with the policy in order that the whole contract may appear.

It is not enough that part C be furnished with the policy; part A is referred to in part C, and both enter into the contract.

In support of this conclusion, my attention has been called to several cases, among them, *Johnson v. Des Moines Life Insurance Co.*, 105 Iowa, 273; *Nugent v. Greenfield Life Association*, 172 Mass., 278; *Baldi v. Metropolitan Life Insurance Co.*, 18 Penn. Superior Court, 599; *Manhattan Life Insurance Company v. Albro*, 127 Federal Reporter, 281.

On these authorities, and on my own construction of the papers in this case, I am forced to the conclusion that section 657 has not been complied with, and that the defendant can make no defense on account of anything contained in or omitted from the application.

If a complete copy had been furnished with the policy, I think that the insured, by the waiver contained in the application, has made the testimony of the physician, Dr. Thomas, competent in this case; and his testimony being competent, and it being agreed that he would testify that section 5 of part C of the application was not true, the defendant would have a defense to the action. Having no defense, however, under our statute, by reason of the fact that the whole application did not accompany the policy, it is immaterial, so far as this case is concerned, what my opinion might be on that subject. I only state it as a matter of interest to the parties, and the conclusion reached in respect thereto, is supported by several authorities, among them *Adreveno v. Mutual Reserve Fund Life Association*, 34 Federal Reporter, 870; *Foley v. Royal Arcanum*, 151 N. Y., 196.

On the whole case, I find for the plaintiff in the sum of \$220, with interest from December 12, 1906, and judgment will be entered for that amount, with costs.

THE UNITED STATES EX. REL. BENJAMIN H. CARTFORD

v.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE INTERIOR.

PUBLIC LANDS; PATENT; MANDAMUS.

1. The title passes from the United States to the patentee of public lands when the entry is made, the patent issued by the proper officer, and recorded in the records kept for that purpose in the Land Office; following *United States v. Schurz*, 102 U. S., 378.
2. After entry made and payment for the land, it appeared that a question arose in the Land Office as to the patentability of the land for the reason that a part of the land had not been fully surveyed. This question was determined adversely to the applicant, the ruling sustained on appeal, and an application for rehearing made. With the record in that condition the clerk in the Land Office having in charge the preparation of patents inadvertently prepared and had executed a patent for the land, which was recorded in the Land Office and sent to the local land office in Oregon for delivery; but before delivery and without notice to the patentee, it was returned to the Land Office and delivery refused. Held, that the execution and recording of the patent vested in the patentee all the title which the Government could thereby convey, and that mandamus would issue to compel delivery of the patent.

No. 50,028, At Law. Decided January 31, 1908.

HEARING on a petition for a writ of mandamus. Writ issued.

Mr. W. E. COLEMAN and Mr. W. L. FORD for the relator.

Mr. G. W. WOODRUFF and Mr. E. F. BEST for the respondent.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case a petition for a writ of mandamus is presented, wherein it is claimed the relator is entitled to the receipt of a patent for 160 acres of land, which it is averred has been signed, sealed, and recorded in the Land Office in the Department of the Interior, and by which it is claimed title has passed to the relator for the land described therein, namely, the east half of the northwest quarter, and the north half of the northeast quarter, of section 6, township 25, south of range 6, west of Willamette meridian, in the State of Oregon.

The petitioner avers that the patent was duly executed, after the application had been made, and payment made, for entry of the land, under the act for the sale of timber lands, approved June 3, 1878 (20 Statutes at Large, 89); and that the patent, after being so executed and recorded, was sent to the local land office in Oregon for delivery to the relator; but before it was delivered, and without notifying the relator that it was there for delivery, it was returned to the Land Office in Washington, and its delivery refused.

A copy of the patent is annexed to the petition, which shows that the same was signed by the President, by his secretary, on the 19th day of November, 1906, and countersigned by the recorder of the General Land Office.

To this petition the Secretary of the Interior has filed an answer, in which he admits that the relator filed in the local land office the sworn declaratory statement of his intention to purchase the said land as claimed; and he admits that the land applied for was not included in any military, Indian, or other reservation of the United States; and that the application shows that the petitioner was qualified to enter lands under the said act; and that said lands are chiefly valuable for timber; but he denies that all of said lands were surveyed public lands of the United States, subject to entry under the provisions of said act; and he avers that the tract described as the east half of the northwest quarter of said section 6 was unsurveyed land, and was not subject to entry under the authority of the said act of June 3, 1878, which provides only for the sale of surveyed public lands of the United States.

He admits that the petitioner published notice, and made the usual proofs in the manner required, and that upon payment of the purchase money and the usual fees, the register and receiver of the local land office issued a cash certificate in due form; but he denies that the register and receiver were authorized to allow entry of the land described as the east half of the northwest quarter of said section, and to issue a cash certificate therefor.

He admits that the register and receiver of the local land office submitted said entry, and their action thereon, to the Commissioner of the General Land Office, as required to do by law, and that the Commissioner, upon an examination of the record, decided that the entry was illegal as to the east half of the northwest quarter, for the reason that it was unsurveyed land, and that the petitioner was required to show cause why his

entry as to said tract should not be canceled.

A copy of the decision of the Secretary, of July 11, 1906, affirming his previous ruling of March 9, 1905, and holding that only the north half of the northeast quarter of said section 6 was subject to entry, and that a patent should issue therefor, is annexed to the answer, and marked Exhibit A.

The defendant admits that a patent, purporting to convey to the petitioner the lands described, was signed, countersigned, and recorded, but was not delivered; and he denies that there was any authority for the issuance of any such patent, which was written and signed inadvertently.

He avers that the records of the Land Office, including the final certificate, known as the patent certificate, upon authority of which alone the petitioner can claim a right to a patent for any of the public lands, show upon their face that the petitioner is not entitled to a patent for such land, but that he is only entitled to a patent for the north half of the northeast quarter of said section, which patent the Land Office has directed shall be issued.

To this answer of the respondent the relator filed a demurrer. The points of law mentioned in the note appended to the demurrer are two—first, that the answer sets forth no good and sufficient reason in law why the patent in controversy should not be delivered to the relator; and, second, that the respondent acted unlawfully and arbitrarily in refusing to deliver the patent.

The counsel for both parties have argued the case very ably and thoroughly, and submitted briefs which the court has carefully examined.

The whole controversy is based on the claim made by the officers of the Land Department that the east half of the northwest quarter of section 6 was not subject to entry and patent, because the whole section had not been surveyed. There does not appear to be any other claimant for the land, and no disqualification of the claimant for the land under the said timber culture act, and no question as to the character of this land as to its being subject to entry under that act, other than that the section had not been completely surveyed.

The act says:

"That surveyed public lands of the United States within the States of California, Oregon, Nevada, etc., valuable chiefly for timber, but unfit for cultivation, etc., may be sold to citizens of the United States, etc., in quantities not exceeding 160 acres to any one person, etc., at the minimum price of \$2.50 per acre."

The petition in this case avers that this section of land was surveyed. The answer avers that the tract described as the east half of the northwest quarter was unsurveyed. Just what lines were run does not appear, but in argument it was claimed that the only line not run was the west line of the section. If such is correct, a portion of the lines for this eighty acres in dispute were actually surveyed.

What substantial objection can the Government have to delivering the patent for such reason? If the patent conveys no title as against the Government, to the eighty acres unsurveyed, the Government could still treat the eighty acres as belonging to the public lands, and allow the same to be sold to some one else; but if the title has passed, notwithstanding the survey was incomplete, then

the refusal to deliver the patent would leave the relator without any means of establishing his title in the State of Oregon.

Since the Supreme Court of the United States delivered its opinion in the case of the United States v. Schurz, 102 U. S., 378, there is no question but what the title passes from the United States to the patentee of public lands when the entry is made, the patent issued by the proper officers, and recorded in the records kept for that purpose in the Land Office.

Before that case was decided there seems to have been some doubt as to the title passing until the patent was actually delivered to the patentee.

The argument on behalf of the respondent is that the patent in this case is void, because of the error in allowing eighty acres of the land to be bought and paid for in advance of a survey, and that being void as to part, it is void in toto, and is therefore a nullity, and that the same conveys no title whatever.

Since the case of *Wm. H. McLarty*, decided by Secretary Lamar, April 28, 1886 (Decisions of the Department of the Interior Relating to Public Lands, vol. 4, page 498), the Land Department, it is claimed, has held that a patent issued in contravention of the record in the office, is without authority and void, and will not be delivered by the department, notwithstanding it was signed, sealed, and recorded.

I am unable to reconcile this ruling with the principles announced in the case of the United States v. Schurz, and I can not distinguish the case at bar from that case in respect to the question of the patent being void. Both patents were inadvertently issued. In the *Schurz* case it was claimed the patent was inadvertently issued and recorded, because the land in question had been designated as a town site, and a controversy was then going on in the Land Office in regard to the same, which was not brought to the attention of the patent clerk.

In this case there was a decision of the Land Department that eighty acres of the land patented was not subject to patent, because it had not been surveyed; but there was either error of fact as to the survey, or through inadvertence this decision of the Land Office was not brought to the attention of the patent clerk; and the patent was regularly issued, so far as it appears upon its face, in accordance with the entry and payment that had been made, and if the court was correct in the *Schurz* case, in holding that the title passed the moment the patent had been executed and recorded, then it seems to me there was nothing left in the hands of the Land Office, or the Secretary of the Interior, in the nature of power, that would authorize them to recall the patent, or to expunge it from the record, and that the original patent itself, or a certified copy, became the property of the patentee, whether it conveyed all the title he had supposed, and for which he had paid, or not; and that being so, there was nothing for the department to do but to allow the patentee to have his patent, and if the Government still claimed that the eighty acres was unlawfully patented, and was still the property of the United States, notwithstanding the patent, the courts of the United States were open for the purpose of canceling so much of the patent as conveyed no title, if such patent should be a hindrance to the

Government in selling to some one else the said eighty acres.

It seems to me that the difficulty lies in the department holding that the patent was void because of the land having been unsurveyed. It may be voidable, but I do not think it is void. The purpose of the survey, it seems to me, is to make the descriptions certain and correct; and if all the lines were run for this section except the west line it seems to me there was no difficulty about the land being identified.

In fact it is claimed in argument that after the entry was made the survey was completed and duly marked on the plat; but whether that was so or not, the partial survey that had been made and entered on the plat books would enable any surveyor to locate the east half of the northwest quarter of this section with absolute certainty.

So that the whole objection to delivering the patent appears to be the technical one that the Government had not taken all the precedent steps usually required and necessary to allow the land to be purchased by the patentee, before the purchase was made.

If the title has passed, notwithstanding the want of completing the survey, and the patentee is satisfied therewith, and can maintain his title to the ground, why should the Government refuse to deliver the patent, and to consider the purchase completed?

The only reason that I can conceive is that the department, having inadvertently issued the patent, wishes to correct its own irregularity, out of abundant caution, and that no substantial reason could be urged for withholding the patent on any other ground.

The Supreme Court of the United States held in the case of *Bicknell v. Comstock*, 113 U. S., 149, that the action of the Secretary in tearing off the seals and erasing the President's name from a patent, and mutilating the record thereof in the General Land Office, without the consent and against the protest of the grantee, was nugatory; and that the title was still left in the grantee in as full force as if no such attempt to destroy or nullify it had been made.

The court was following the decision in the *Schurz* case, and that was a patent which had been issued by mistake, and which the department insisted upon recalling from the local land office and canceling.

In the case *In re Emblen*, 161 U. S., 52, the court holds that the patent conveys the legal title to the patentee, and can not be revoked or set aside except upon judicial proceeding instituted in behalf of the United States.

In *Germania Iron Co. v. U. S.*, 165 U. S., 379, it is held that the issue of a patent is in effect the final determination of that department in favor of the patentee, etc.

Counsel for the respondent in his argument alluded to the patent as an administrative act purely, likening it to an execution issued on a judgment which must have a proper record to support it, otherwise it would be void.

It is to my mind, however, more like the final judgment in a case after proper pleading and hearing, where all questions of conflict of evidence are settled by a decision of the court; and when the judgment is pronounced, so long as it remains unrevoked it becomes a verity unless for some reason the court had no jurisdiction, and in

that event the judgment can always be attacked collaterally; but for irregularities only, or any reason short of a jurisdictional one, the judgment is conclusive and binding upon the parties to the controversy until it is set aside by some direct proceeding in the cause.

Here the relator made his entry, paid for the land, and awaited his patent.

In considering the case after the entry was made a question arose in the Land Office as to the patentability of half of the land which the relator had purchased, and that question was determined in the Land Office adversely to the relator, and an appeal was taken and the ruling sustained, and an application for a rehearing was made; and while the record was in that condition, and probably by reason of the fact that the Land Office has separate divisions and clerks who transact different parts of the business pertaining to the sale of lands, the clerk having the preparation of the patents inadvertently prepared and had executed, the final act which divests the title from the United States and vests it in the patentee, and thereby left the question of patentability still pending in the Land Department, or with an adverse ruling then made. The execution and recording of the patent vested in the relator all the title which the Government could thereby convey, and he is entitled to the evidence of his purchase, so that he may establish that title of record in the State of Oregon.

The result of my consideration is that this case can not be distinguished in principle from the Schurz case, and that the demurrer to the respondent's answer must therefore be sustained.

Trustee—Approval by Referee—Review—Appointment Procured by Bankrupt.—In the case of *In re Hanson*, 19 Am. B. R., 235, it has been held that an order of a referee approving the creditors' appointment of a trustee is subject to review by the district judge, and that, however high the character of a proposed trustee may be, the active interference of the bankrupt in favor of his appointment will render him ineligible and such appointment will for that reason be disapproved.

Examination of Bankrupt by Holder of Improved Claim.—In *Matter of Rose*, 19 Am. B. R., 169, it is held that a creditor, though he has not proved his claim, is entitled to an order for the examination of the bankrupt under section 21 of the Bankruptcy Act.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**Darr, Peyser & Curtin, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *John Fogarty*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. *JOHANNA FOGARTY*, 2112 16th st. N. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,964. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of *Randall B. Corbin*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. *ELLA A. BASSFORD*, 414 10th st. S. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,964. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of *Elizabeth Kohler*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. *ROSA E. FAULKNER*, 280 W st. N. W., Wash., D. C. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,006. Administration. [Seal.] 6-3t

**A. E. Rowell, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the State of Maryland and of the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *Alfred W. Rowell*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. *AMBROSE ROWELL*, West Falls Church, Va.; *ELIAS ROWELL*, Hyattsville, Md. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,966. Administration. [Seal.] 6-3t

**Irwin B. Linton, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of *Alpheus Middleton*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. *FRANK D. MIDDLETON*, care of Barber & Ross, 11th and G sts. N. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,027. Administration. [Seal.] 6-3t

**Legal Notices.**

**Lyon & Lyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of David Roberts, Deceased.**  
**No. 14,941. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Charles F. Parker, it is ordered this 5th day of February, A. D. 1908, that Henry Walker and the unknown heirs at law and next of kin of David Roberts, deceased, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD,**

[Seal] Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 6-3t

**Ralston & Siddons, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**American Security and Trust Company v. Eben Grant**  
**Townsend et al. No. 27,546. Equity Doc. 61.**

**ORDER OF PUBLICATION.**

The object of this suit is to distribute, under the order of the court, certain trust funds and securities amounting in the aggregate to about four thousand (4,000) dollars, held by the complainant as trustee under an agreement in trust between the defendants, Eben Grant and Eddy B. Townsend, as set forth in the bill of complaint filed herein. On motion of the complainant, it is, this 5th day of February, A. D. 1908, ordered, that the defendant, Eben Grant Townsend, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order shall be published, at least once a week for three successive weeks

[Seal] In The Washington Law Reporter and The London Times. (Signed) **HARRY M. CLA-BAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 6-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah S. Sampson, Deceased.**  
**No. 14,939.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary C. Smith, it is ordered this 5th day of February, A. D. 1908, that William B. Smith, Edwin B. Smith, Charles W. D. Smith, Lewis E. Smith, Clara S. Bosworth, Harold Smith, William Smith, Frank Smith, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** A true copy.

Attest: James Tanner, Register of Wills. 6-3t

**Gordon & Gordon, Erskine Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Agnes Kayser v. Agnes M. Albrecht.**  
**Equity No. 27,488.**

The object of this suit is to sell for partition the property of which Elizabeth Christina Jacobi died seized, namely, part of lots 169 and 171 in Beatty and Hawkins' addition to Georgetown in square 1254, lot 2 in George W. Riggs' subdivision of original lots 161, 162, and 163, in Beall's addition to Georgetown in square 1211, and part of lot 40 in Peter, Beatty, Threlkeld and Deakins' addition to Georgetown in square 1221, all in the city of Washington, in the District of Columbia. On motion of the complainant, it is this 5th day of February, A. D. 1908, ordered that the defendants, Evelina Meyers and Mary Nirod, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. **ASHLEY M. GOULD, Justice.** True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 6-3t

**Legal Notices.**

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Chandler Bancroft Davis, Deceased.**  
**No. 14,938.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederica Gore Davis, it is ordered, this 5th day of February, A. D. 1908, that Horace Davis, Andrew McFarland Davis, Girardi Davis, Hasbrouck Davis, Chandler Davis, Eliza Bancroft Davis, Louise Bancroft Davis, John Chandler Bancroft Davis, Bancroft C. Davis, Arthur Edward Davis, Edwin Loring Sprague, Jr., Ruth Davis Sprague, Henry Bancroft Sprague, infant, Richard Warren Sprague, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 6-3t

[Seal] the first publication to be not less than thirty

days before said return day. **ASHLEY M.**

**GOULD, Justice.** A true copy. Attest: James Tanner,

Register of Wills. 6-3t

[Filed February 6, 1908. J. R. Young, Clerk.]

C. C. James, Solicitor

**In the Supreme Court of the District of Columbia.**  
**John M. Herfurth et al., Complainants, v. Unknown**  
**Heirs, Devisees, and Alienees of Benjamin Stod-**  
**dert, John Rochford, Henry Burford, Defendants.**  
**Equity No. 27,575.**

The object of this suit is to declare the title to part of lot nine (9), in square five hundred and thirty-eight (538), beginning for the same at a point on south F street twelve (12) feet and six (6) inches from the east line of said lot nine (9) in said square; thence running west twelve (12) feet and six (6) inches; thence north seventy-nine (79) feet and six (6) inches to an alley; thence east twelve (12) feet and six (6) inches; thence south seventy-nine (79) feet six (6) inches to the place of beginning, in the city of Washington, District of Columbia, to be good in fee simple in the complainants by reason of adverse possession thereof for more than twenty-two years. On motion of the complainants, by C. Clinton James, their solicitor, it is, by the court, this 6th day of February, A. D. 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of Benjamin Stoddert, of John Rochford, and of Henry Burford cause their appearances to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the case will be proceeded with as in case of default. A copy of this order shall be published once a week for four successive weeks prior to said return day in The Wash-

[Seal] ington Law Reporter and The Evening Star. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-4t

**Hargrove & Morris, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Carroll D. Wright and John Bruce McPherson, Ex-**  
**ecutors and Trustees, Complainants, v. Charles**  
**Wallace Stilwell et al., Defendants.**  
**No. 27,580. Equity Docket No.—**

The object of this suit is to obtain a decree construing the will and codicil of Anna M. Colman, formerly of the District of Columbia, deceased, and directing the executors how to distribute the estate of said deceased. On motion of the complainants, it is this 6th day of February, A. D. 1908, ordered that the defendants, Charles Wallace Stilwell, William Wallace Stilwell, Caroline E. Wright, Isabella Wilbur Pyfer, Carrie Loomis Schober, and all persons having or claiming to have any interest in said estate, or any claims or demands under said will and codicil as legatees, devisees, heirs, or representatives, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Re-

[Seal] porter and The Evening Star. By the Court: **HARRY M. CLA-BAUGH**, Chief Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-3t



**Legal Notices.****Nelson Wilson, Attorney****In the Supreme Court of the District of Columbia,  
Holding Probate Court.****In re Estate of Richard Henry Lansdale, Deceased.  
Administration, No. 14,881.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Stokes Lansdale, it is ordered this 31st day of January, A. D. 1908, that Clayton V. Sayre, Ella Hargrove Sayre, E. Lelola Baxeres, Lola M. Hobbs, George Harold Hobbs, George W. Huddleson, Harry Wright Huddleson, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty days before said return day.  
ASHLEY M. GOULD, Justice. A true copy.

Attest: James Tanner, Register of Wills. 6-3t

**E. S. Mussey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna S. Mallett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of February, 1908. FRANK B. KING, 1442 R. I. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,901. Administration. [Seal.] 6-3t

**Irving Williamson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Macdaniel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. NORRIS MACDANIEL, 409 15th st., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,021. Administration. [Seal.] 6-3t

**Children & Fenning, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of John W. Crawford, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of February, 1908. GEO. S. WILSON, Oak Grove, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,018. Admn. [Seal.] 6-3t

**George F. Havell, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry W. Reid, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of February, 1908. GEORGE F. HAVELL, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,080. Administration. [Seal.] 6-3t

**Legal Notices.****Darr, Peyser & Curtin, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Mary J. Kennedy, Deceased.****No. 14,990. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Darr, it is ordered this 3d day of February, A. D. 1908, that William Kennedy, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 6-3t

**[Filed February 4, 1908. J. R. Young, Clerk.]****R. Ross Perry & Son, Solicitors****In the Supreme Court of the District of Columbia.  
In re Dissolution of The Columbia Fire Insurance  
Company of the District of Columbia.****No. 27,590. Equity.**

It appearing to the court that application has been made to the court in the above entitled cause for a voluntary dissolution of the body corporate, The Columbia Fire Insurance Company of the District of Columbia, and it appearing to the court that such application, together with the accompanying accounts, inventories, and affidavit required by law have been filed in this court, it is accordingly upon motion of Messrs. R. Ross Perry & Son, attorneys for the petitioner, this 4th day of February, 1908, ordered that all persons interested in the said corporation, The Columbia Fire Insurance Company of the District of Columbia, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 10th day of March, 1908, why the said body corporate should not be dissolved; further it is ordered that a notice of this order shall be published in The Washington Post and The Evening Star, papers of general circulation of the said District, and also in The Washington Law Reporter, weekly for three successive weeks, the first insertion to be not less than

[Seal] one month before the said 10th day of March, 1908, being the day fixed for showing cause as aforesaid. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 6-3t

**William C. Prentiss, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas P. Stephenson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. JANIE S. STEPHENSON, 2016 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,106. Admn. [Seal.] 6-3t

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

[This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Margaret A. Simon, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of February, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of February, 1908. HENRY W. SOHON, 844 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,112 Administration. [Seal.] 6-3t

**Legal Notices.****James H. Taylor, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Catherine Ruppert**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. **JAMES H. TAYLOR**, 1419 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,609. Administration. [Seal.] 6-3t

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Samuel W. Stinemetz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of January, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,972. Administration. [Seal.] 6-3t

**Wm. M. Offley, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert I. King**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. **MARY M. PATON**, care of Wm. M. Offley, 817 4th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,012. Admn. [Seal.] 6-3t

**Lambert & McLean, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Petronilla M. Fenwick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. **RUDOLPH H. YEATMAN**, 410 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,695. Administration. [Seal.] 6-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Lizzie Dewey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of January, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by **George Howard**, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,948. Administration. [Seal.] 6-3t

**Legal Notices.****SECOND INSERTION.****William B. Reilly, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In re Estate of William Dacy, Deceased.  
No. 14,779.****ORDER OF PUBLICATION.**

The object of the petition filed in this cause is to sell the real estate owned by the decedent for the payment of debts, the petition being filed by the administrator. On motion of the administrator it is, this 29th day of January, A. D. 1908, ordered that the unknown heirs and next of kin of **William Dacy**, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published at least once a week for three successive weeks [Seal] in The Washington Law Reporter and The Washington Herald. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 5-3t

**T. K. Hackman, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **David K. Hackman**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of January, 1908. **TURNER K. HACKMAN**, Staunton, Va.; **WM. J. FRIZZELL**, 42 V st. N. W., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,991. Administration. [Seal.] 5-3t

**McNeill & McNeill, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **William H. Driggs**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of January, 1908. **MARY EDDY DRIGGS**, 2236 Mass. ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,997. Administration. [Seal.] 5-3t

**Joseph J. Darlington, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John M. Clapp**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of January, 1908. **ANNA F. CLAPP**, 1024 Vermont ave.; **JOSEPH J. DARLINGTON**, 410 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,167. Administration. [Seal.] 5-3t

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**Legal Notices.**

**B. F. Leighton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret E. Rankin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of January, 1908. ARCHIBALD M. MCLACHLEN, 2800 Ontario Road; FIRMEN R. HORNER, 1800 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,880. Administration. [Seal.] 5-3t

**R. Ross Perry & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Georgeanna Dishman, sometimes known as Georgeanna Bowles, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of January, 1908. JULIA BUTLER, 1886 Waverly Place N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,890. Administration. [Seal.] 5-3t

**Alexander H. Bell, Wm. E. McKenney, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Rover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of January, 1908. MARY E. ROVER, 40 I st. N. W.; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,978. Admn. [Seal.] 5-3t

**THIRD INSERTION.**

**William L. Pollard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Julia Kane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. WILLIAM W. QUEEN, 1810 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,568. Administration. [Seal.] 4-3t

**Thompson & Laskey, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John W. Frost, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. JOHN E. LASKEY, 344 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,848. Administration. [Seal.] 4-3t

**Legal Notices.**

**Kappler & Merillat, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Frances S. Nichols v. George W. Nichols.**  
**No. 27,816.**

The object of this suit is to obtain a decree a mensa et thoro by complainant against defendant, custody of their two children Eugene M. and George A. for complainant, and an injunction against defendant from molestation of complainant and her two children by defendant. On motion of the complainant, it is this 3d day of January, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The [Seal] Washington Herald. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 4-3t

**Birney & Woodard, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Loring Chappel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. ARTHUR A. BIRNEY, 602 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,957. Administration. [Seal.] 4-3t

**Chas. J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Charles L. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. EDWARD V. MURPHY, 2511 Pa. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,938. Administration. [Seal.] 4-3t

**C. Clinton James, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of January, 1908. MARGARET A. GIBSON, care of C. Clinton James, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,950. Administration. [Seal.] 4-3t

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers of the District of Columbia and the State of Pennsylvania, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah A. White, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of January, 1908. HARRY M. WHITE, Greencastle, Franklin Co., Pa.; MICHAEL J. COLBERT, 412 5th st., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,811. Administration. [Seal.] 4-3t

**Legal Notices.**

**Chas. A. Jaquette, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John S. Anderson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. **CHARLES A. JAQUETTE**, Sec'y's Office, Treas'y Dept. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,973. Administration. [Seal.] 4-8t

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Henry P. Sanders, Deceased.**  
**No. 14,956. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, It is ordered this 23d day of January, A. D. 1908, that Annabel Sanders (minor), Carrie Louise Sanders, William Bennett Sanders, Harry Douglass Sanders, Leander Edwin Sanders, Archie D. Sanders and Hette B. Sanders, and all others concerned, appear in said court on Monday, the 24th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein

[Seal] mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 4-8t

**Levi H. David, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Camille Jacobs et al., Complainants, v. Irving Jacobs,**  
**Defendant. Doc. 58. Eq. 28,475.**

On consideration of the report of Levi H. David, trustee, and the affidavit accompanying the same, filed herein, showing offer from Henry M. Adams, in the sum of \$218.90, in cash, for the equity in the 16.79-100 ft. front on 14th st., extended, next north of the south 16.76-100 ft. of lot 14, by depth of 187 ft. and parallel to the south side of said lot 14, in block 38, Columbia Heights, improved by premises 8123 14th st., said real estate being subject to a deed of trust of \$8,000 at 6%, said Adams agreeing to pay all taxes, and cancel all interest, due upon said property, it is by the court, this 23d day of January, 1908, ordered, adjudged and decreed that said offer be, and same is hereby ratified and confirmed, unless cause to the contrary be shown on or before February 24th, 1908. Provided a copy of this order be published in The Law Reporter once a week for three successive weeks prior to said last mentioned

[Seal] date. **ASHLEY M. GOULD**, Justice. True copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 4-8t

**M. J. Keane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Connor, sometimes known as John O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of January, 1908. **MICHAEL J. KEANE**, 412 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,917. Administration. [Seal.] 4-8t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Wm. H. Yerkes, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 10th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 21st day of January, 1908. **HANNAH A. YERKES**, JNO. K. YERKES, **WILLIAM H. YERKES, Jr.**, by **J. J. Darlington**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,127. Administration. [Seal.] 4-8t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Richard Young, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 14th day of February, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of January, 1908. **AMERICAN SECURITY & TRUST CO.**, by **James F. Hood**, Secretary; by **Wm. A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,148. Administration. [Seal.] 4-8t

**Gordon & Gordon, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Lizzie B. Gladmon v. Florence Edith Cross et al.**  
**Equity No. 27,298.**

The object of this suit is to sell for partition the property of which Celia E. V. Beall died seized, namely, part of lot 4, in square 558, in the city of Washington, in the District of Columbia. On motion of the complainant it is, this 21st day of January, A. D. 1908, ordered that the defendants, **Florence Edith Cross**, **Evelyn E. Copeland**, and **Marshall Elmer Carrier**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Wash-

[Seal] ington Law Reporter and The Evening Star. **ASHLEY M. GOULD**, Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 4-8t

**J. J. Darlington, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Special Term for Probate Business.**  
**In re Estate of Jennie H. Scott, Deceased.**  
**No. 14,851. Admn. Doc.**  
**ORDER OF PUBLICATION.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Albert F. Fox** and **Joseph J. Darlington**, It is ordered this 23d day of January, A. D. 1908, that **Jennie McElroy Brown**, **Andrew J. McElroy**, **Sarah McElroy**, **Gordon W. Boyd**, **John Boyd**, **Jemima Alexander**, the unknown heirs at law and the unknown next of kin of said deceased, of **Clin-ton McElroy**, and of **Sherman Boyd**, and all others concerned, appear in said court on Wednesday, the 26th day of February, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein

mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of Probate Court. 4-8t

**Legal Notices.**

W. T. Fitz Gerald, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of January, 1908. JOHN ROBINSON, No. 6 North Hill Court N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,794. Administration. [Seal.] 4-3t

Jas. B. Archer, Jr., and Jno. Lewis Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Neale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of January, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of January, 1908. FLORENCE NEALE, 1618 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,988. Administration. [Seal.] 4-3t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Joseph Kay McCammon, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of February, 1908, at 10 o'clock A.M., as the time, and said court, room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 2nd day of January, 1908. ORMSBY McCAMMON, AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary; by Wm. A. McKenney, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,164. Administration. [Seal.] 4-3t

**FOURTH INSERTION.**

Geo. Francis Williams, Solicitor

In the Supreme Court of the District of Columbia.  
William H. McCray, Complainant, v. John R. Tucker et als., Defendants. Equity No. 27,583.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to lots twenty (20), twenty-one (21), and twenty-two (22), in Henry A. Willard's recorded subdivision of square one hundred and fifty-one (151), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 17th day of January, 1908, ordered that the defendants, John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. E. Graham, Mary T. Magill, Evellina Powell, W. E. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evellina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evellina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred D. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Tallafarro, Julia Clark Tucker, Nathaniel Beverly Tucker, William F. F.

**Legal Notices.**

Tucker, John R. Bryan, Della Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Perronneam Brown, Virginia C. Braxton, St. George Tucker, Coalter, Ellis Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the defendants, the unknown heirs, devisees, or allenees of such of the above-named defendants that are dead, and the unknown heirs, devisees, or allenees of Thomas Tudor Tucker, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-5t

**FIFTH INSERTION.**

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia.  
Katherine M. Ruppert, Complainant, v. The Unknown Heirs, Allenees, and Devisees of Andrew Coyle, Deceased, Defendants.  
No. 27,448. In Equity.

The object of this suit is to establish title by adverse possession to lot sixty-one (61) of T. Franklin Schneider's subdivision of square four hundred and eighty-two (482), as per plat recorded in book 17, folio 122, of the records of the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 4th day of December, A. D. 1907, ordered that the defendants cause their appearance to be entered herein on or before the first Tuesday of March, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post twice a month for the months of December, 1907, January and February, 1908. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. dec 6-18 '07; Jan 8-10; feb 6-18 '08

**SIXTH INSERTION.**

Howard Boyd, Solicitor

In the Supreme Court of the District of Columbia.  
Charles E. Tribby v. Caroline S. Bowles Murphy, alias Carrie S. Bowles Murphy, and the Unknown Heirs, Devisees, and Allenees of John Arnot, Deceased, Defendants. Equity No. 27,808.

The object of this suit is to establish title in the complainant by adverse possession to lot seven (7) in the subdivision of square three hundred and eight (308) in the city of Washington, District of Columbia, as recorded in subdivision book 10 at page 92, of the records of the surveyor of said District. On motion of the complainant, by Howard Boyd, his attorney, it is this 21st day of November, 1907, ordered that Caroline S. Bowles Murphy, otherwise known as Carrie S. Bowles Murphy, and the unknown heirs, devisees, and allenees of John Arnot, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month and twice a month during the next two months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. nov 22-28; dec 6; Jan 8-10; feb 7-14

[Seal] Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. nov 22-28; dec 6; Jan 8-10; feb 7-14

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WASHINGTON, D. C. - - - FEBRUARY 14, 1908

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### Washington Gas Light Company—Application to Increase Stock—Writ of Prohibition Granted.

On the application of the Commissioners of the District of Columbia, the Court of Appeals of this District has directed the writ of prohibition to issue against Mr. Justice Gould, of the Supreme Court of the District, and the Washington Gas Light Company, to prohibit further proceedings in the matter of the application of that company to increase its capital stock. The proceeding for increase of its capital stock was instituted by the Gas Light Company under the provisions of section 5 of the act of Congress of June 6, 1896, which provides that neither of the gas companies doing business in this District should thereafter issue any greater number of shares of stock than should be equal to the actual cash value of said plants and necessary cost of future construction or enlargement of plants, which cash value and cost of extension should be first ascertained and authorized upon petition therefor to the Supreme Court of this District, under such regulations as the justices thereof should prescribe. The court below was engaged in the hearing of the application when the petition for a writ of prohibition was filed in the Court of Appeals by the Commissioners of the District.

The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that section 5 of the

act in question is unconstitutional and directs the writ of prohibition to issue as prayed. In so holding, the court said: "After careful consideration, we are of the opinion that the duty of ascertaining the value of the plant of the Washington Gas Light Company and of its further extensions or enlargements as the basis for increasing its capital stock, is a legislative one, involving the exercise of no judicial power in the constitutional sense, and can not therefore be imposed upon the Supreme Court of the District of Columbia." The opinion is concurred in by Mr. Justice Robb. Mr. Justice Van Orsdel filed a dissenting opinion, holding that the section of the act in question is constitutional and properly delegates a duty to the Supreme Court of the District. It is stated that an appeal will be taken to the Supreme Court of the United States. The case on behalf of the Commissioners was presented by Mr. E. H. Thomas and Mr. Henry P. Blair, while Messrs. R. Ross Perry & Son, Mr. R. H. Goldsborough, and Messrs. Lambert & McLean appeared for the Washington Gas Light Company.

### Master and Servant—Liability for Wilful Torts of Servant.

The opinion of the Supreme Court of Georgia in the case of Savannah Electric Co. v. Wheeler, 58 S. E., 38, contains a very interesting discussion of the question as to the liability of a master for the wilful torts of his servant committed in the course of his employment. The petition in the case alleged that a conductor on the car of defendant street railway company, while engaged in the prosecution and within the scope of his business in collecting fares, failed and refused to give a passenger correct change, and upon request therefor drew a pistol and fired at the passenger, but missed him and struck a woman passing on the public street through which the car was running, causing her death. Plaintiffs were the husband and children of the victim. It was held that the allegations set out a cause of action against the company and the petition was not demurrable.

THE Court of Appeals of this District, in an opinion by Mr. Chief Justice Shepard, has reversed the judgment of the court below in the case of Morgan v. Morgan. The appeal was from a judgment denying probate of a will entered upon the verdict of a jury finding against its validity. Messrs. Wilson & Barksdale and Mr. M. J. Colbert represented the appellants, and Mr. Henry E. Davis and Mr. J. K. M. Norton the appellees.



## Court of Appeals of the District of Columbia.

EDWARD LEON THOMPSON, APPELLANT,  
v.  
THE UNITED STATES.

CRIMINAL PROCEDURE; PLEA IN ABATEMENT; PROCURING MISCARRIAGE; EVIDENCE; PREVIOUS CONVICTION; ACCOMPLICES.

1. A plea in abatement to an indictment setting up that the indictment is not founded upon an inquest by the grand jury had at the term at which it was returned, that it is not predicated upon a formal presentment by the grand jury returning it, and that it appears on the face of the record that the proceedings of the grand jury in respect to the indictment were irregular, unlawful, and in violation of the constitutional rights of defendant, is insufficient in that it consists merely of conclusions of law, and a demurrer thereto is properly sustained.
2. Evidence of the attending physician, who had examined a woman shortly after an unlawful operation had been performed on her, as to her condition at the time of such examination, is admissible on the trial of the party charged with performing such operation.
3. The refusal by the trial court of a motion by defendant to strike out incompetent testimony, elicited on the cross-examination of a witness in response to direct questions propounded by counsel for defendant, is a matter in its discretion.
4. Under section 1007 of the Code, providing that the fact of a party's previous conviction of crime may be given in evidence to affect his credibility, the term conviction denotes the judgment of a court; and where the court, in the exercise of its power, sets aside a verdict of guilty, there is no conviction.
5. Where, on the cross-examination of a defendant charged with procuring a miscarriage, questions asked by the prosecuting attorney, over defendant's objection, elicited that he had previously been tried for a like offense and had been found guilty by the jury, first of murder and then of manslaughter, the verdict in each case having been set aside and the case subsequently nolle prossed, held that such questions were improper and the admission of such evidence constituted reversible error.
6. Under section 809 of the Code, the woman upon whom the act producing a miscarriage is committed is not, in a legal sense, an accomplice, notwithstanding it was done with her knowledge and consent.
7. Nor do the provisions of section 808 of the Code, making all persons advising, inciting, etc., in the commission of an offense, principals, apply in such case, as the victim of an unlawfully procured miscarriage is not an accessory before the fact and is not indictable as a principal.

No. 1824. Decided February 5, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, holding a Criminal Court, entered upon a verdict finding him guilty of procuring a miscarriage. Reversed.

Mr. LEO SIMMONS for the appellant.

Mr. D. W. BAKER and Mr. STUART McNAMARA for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, Edward Leon Thompson, alias Edward Leon, was charged by an indictment in three counts, substantially, with inserting in an instrument of description unknown to the grand jury into the womb of one Sadie Volk, a pregnant woman, on October 11, 1905, with the intent to cause her to give premature birth to the child with which she was then and there pregnant; the use of said instrument not being under the direction of a competent licensed practitioner of medicine, and not being necessary to preserve the life of said woman. The conclusion was that, by the said means, the said Edward Leon Thompson,

alias Edward Leon, did then and there cause and procure the miscarriage of the said Sadie Volk and the premature birth of the said child, etc.

The defendant entered a plea in abatement to the indictment setting out the following grounds:

"1. That the indictment in the above-entitled case is not founded upon inquest had by the grand jury at the term at which said indictment was filed in open court.

"2. That the indictment is not predicated upon a formal presentment by the grand jury which returned the same to the court.

"3. That upon the face of the record it appears that the proceedings of the grand jury in respect of the indictment are irregular, unlawful and in violation of the constitutional rights of the defendant and for these causes said indictment and the prosecution thereunder, it is respectfully submitted, ought to abate."

The United States demurred to this plea, assigning among other grounds, that its allegations were repugnant to each other, and that they were uncertain and ambiguous, failing to specify the grounds of objection with the requisite certainty and precision. The demurrer was sustained, and the defendant excepted.

The United States produced the said Sadie Volk as a witness, who testified substantially as follows: Being pregnant, went to the house of the defendant, whom she identified, and was shown into his office. She inquired of defendant, who was alone, if he operated. He said "yes," and that he would perform the operation. He then inquired how long she had been pregnant and her answer was, three months. He caused her to recline on a sofa in the office, lifted her clothes and performed an operation on her. She could not see what he did. He operated about ten minutes. She paid him \$15 and he told her if the operation did not have effect to return on the third day thereafter. She returned home. On the morning of the third day she became ill and gave birth to the fetus, which remained in the room. About noon Dr. McKay came to see her and she was removed to Columbia Hospital. The witness gave the location and number of the house where she saw defendant, and described the office and furniture, and a brass sign plate on the door, reading "Dr. Leon." No additional facts were developed on cross-examination. Dr. McKay was next introduced and testified that he was called to see Sadie Volk on Sunday, and found her in her room in bed covered with clothes and soaked with blood. Found membrane projecting from her vagina, which meant that a child had recently been brought forth. He examined into her condition. She told him that her baby was under the bed, and he found it there. She showed symptoms of having absorbed some poison, and he had her conveyed to the hospital for treatment. The fetus was seven or eight inches long and without life in it. She was apparently a stout, robust woman, and he saw nothing to indicate the necessity of an operation to produce a miscarriage in order to save her life. The defendant objected to the statements of the patient and to the expression of the foregoing opinion by the witness. Both objections were overruled and exceptions noted. The witness was not asked to state any declarations of the patient, other than such as indicated her condition at the time, and no statement as to



the manner in which the miscarriage had been produced was asked for, or given.

The defendant examined the witness at length in regard to the declarations of the patient not only on that occasion, but subsequently. This elicited the statement that she was afraid of death and told him on the way to the hospital that Dr. Leon gave her medicine on Wednesday night, and told her that 'within forty-eight hours the child would come. On the succeeding day of the trial defendant moved the court to exclude all of the evidence of the witness because it was "hearsay" only. One of the surgical staff of Columbia Hospital testified that he treated the woman at the hospital. Could not tell whether her miscarriage resulted from violence or natural causes. Knew that the fetus was delivered prematurely. Saw nothing in the formation of the woman that would make ordinary child-birth dangerous to her health. She looked like a healthy woman. Another surgeon who had treated the woman while in the hospital, said that she was suffering from an incomplete abortion or miscarriage. The fetus had been expelled and the placenta retained. He removed what remained in the uterus. There was nothing to indicate that an abortion was necessary to preserve her life and health, and he thought that she could have borne a full-term child without danger to life or health. Cross-examined, he said that there was nothing to indicate the means by which the abortion had been produced. The employer of the woman testified that she had cooked for his family from September, 1905, to the time of her illness. She was apparently in good health and performed her duties satisfactorily. A member of the detective force testified to visiting defendant's house on October 16, 1903, and entering his office. With some difference as to the furniture his statement as to situation, furnishings, and the sign of Dr. Leon corresponded with the description given by Sadie Volk in her testimony. He said that defendant, whom he saw there, had lived there from five to eight years. The defendant objected to this evidence which was offered as tending to corroborate Sadie Volk, but the court overruled the same, and exception was taken.

The United States having closed the case with this evidence, the defendant produced his wife, whose testimony tended to show that the defendant was not in his house on October 11, 1905. Was not at home on Wednesday or Wednesday night. Defendant then offered himself as a witness and denied having seen or operated upon Sadie Volk. Had never seen her before the trial. The defendant was cross-examined at length by the counsel for the United States as to his practice, etc., and as to the reasons why his full name was not on his sign. He said it was a sign used by an uncle of that name whom he had succeeded. He admitted that he was not a licensed physician. He was then asked if he had ever been convicted of murder. He denied that he had ever been convicted of murder or manslaughter. He was then asked if he had ever been tried for either offense. The following then occurred: Q. "Is it not true that you were convicted of murder, the charge being the killing of a woman by an abortion? A. No, sir. Q. That you were convicted, that a new trial was granted you, and you were convicted of manslaughter and a new trial was given you and you were convicted again? A. No, sir; that is not true,

not on the ground you speak of. Q. Well, on any ground. A. I was tried for committing an abortion. The woman did not die. Q. The child died, though, and you were convicted of murder, were you not? A. You mean by the jury? Q. Yes. A. The first trial? Q. Yes. A. Yes, sir. Q. Then you got a new trial and were convicted of manslaughter? A. Yes. Q. And then that verdict was set aside. A. Yes, the case was nolle prossed. The Court (to the prosecuting attorney): And that is all there is to it? U. S. Attorney: Yes, that is all." The defendant objected to each and every question so asked as to former trials, and at the conclusion moved the court to strike out all of the aforesaid testimony. The court overruled the objections and motion, defendant noting exceptions in each instance.

The defendant asked special instructions to the jury to the effect that the witness, Sadie Volk, was, in law, an accomplice of the defendant, and that her evidence must be corroborated in order to convict.

The general charge was not excepted to.

The jury returned a verdict of guilty, and, after overruling a motion for new trial, the court sentenced the defendant to imprisonment for two years in the penitentiary.

1. There was no error in sustaining the demurrer to the plea in abatement. Instead of certain and distinct allegations of fact, it consists of conclusions of law. The indictment is regular, containing the formal indorsements showing it to be "a true bill," under the signature of the foreman, and was presented and filed in open court. The argument for the appellant indicated that it was the intention to show that there had been an indictment by a former grand jury, and that the present one was found thereon without reexamination of witnesses. Without expressing an opinion on the point whether such an inquiry can be made under the rules of practice prevailing in the District, it is sufficient to say that no such fact is alleged in the plea.

2. No attempt was made by the prosecution to prove by the witness, Dr. McKay, any declarations made by the party on whom the unlawful operation is charged to be performed, tending to show the cause of her miscarriage, the fact of which was apparent, or to connect the defendant therewith. The evidence was confined to her condition at that time. Such evidence is clearly competent. *Lyles v. U. S.*, 20 App. D. C., 559, 564; 31 Wash. Law Rep., 67; *U. P. R. R. v. Urlin*, 158 U. S., 271, 274; *State v. Howard*, 32 Vt., 380, 404; 1 Gr. Ev. (14 Ed.), sec. 102; *Com. v. Good*, 11 Gray, 85. The opinion of the witness, founded on the conditions observed by him, that there had been a recent miscarriage, was admissible also.

3. The defendant's counsel, not content with cross-examining Dr. McKay in respect of the matters involved in his direct examination, inquired of him as to statements made by the injured woman thereafter, and elicited the fact that when on her way to the hospital she had said to him that the defendant had given her medicine on Wednesday night and told her the child would come within forty-eight hours. After this the examination was continued in an attempt to show that she had given the name of another person who had given her a powder at her house, and the witness was caused to repeat the declaration relating to the defendant. On the next day the

same counsel moved the court to "strike out all the evidence of the witness on the ground that it is purely hearsay." This motion related as well to the evidence elicited by the United States as to that by the defendant. As the evidence on behalf of the United States was competent, the motion, as made, was properly denied. As the only part of the evidence that was incompetent, under the rule above stated, was that in direct response to questions propounded by the defendant, himself, the court was not bound to strike it out, even on a motion to that end, and no other. It was a matter of discretion.

4. The next assignment of error relates to exceptions taken to the action of the court in permitting the district attorney to question the defendant, when a witness on his own behalf, as to his former trials for the commission of crime. As shown in the statement of the case, the witness was compelled to admit that he had been tried on an indictment charging him with the murder of a child, through producing the miscarriage of the mother, and twice found guilty by the jury, though in each instance a new trial had been granted, and the case finally dismissed.

(1) The contention on behalf of the United States, that this evidence is admissible by virtue of section 1067 of the Code is untenable. That section is found in Chapter XXV of the Code, which relates to evidence and reads as follows: "No person shall be incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as a witness, either upon the cross-examination of the witness or by evidence aliunde; and the party cross-examining him shall not be concluded by his answers to such matters. In order to prove such conviction of crime it shall not be necessary to produce the whole record of the proceedings containing such conviction, but the certificate, under seal, of the clerk of the court wherein such proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient." Though in common parlance one may be said to be convicted when found guilty by the jury, the word in its technical, legal sense denotes the judgment of the court. If the court in the exercise of its undoubted power sets aside the verdict there is no conviction. *Francis v. Weaver*, 76 Md., 457, 467; *Blanfers v. People*, 69 N. Y., 107, 109.

(2) It remains to consider whether there are other grounds upon which the competency of the character of the cross-examination permitted in this case can be sustained. Undoubtedly a wide latitude has been permitted in the cross-examination of witnesses generally for the purpose of testing their credibility; and on account of the difficulty of laying down a general rule of observance in all cases, much has been left to the discretion of the trial court. It is also true that one offering himself as a witness on his own behalf subjects himself to the general rules that apply in the case of an ordinary witness offered on behalf of another. There is, however, a marked difference between the relations of the two to the case on trial that must be taken into consideration. Inquiries that may tend to disgrace an ordinary witness, and thereby discredit his testimony, can prejudice him in no other way; they operate to the prejudice of the party on trial only in that they may lessen the weight of testimony on which he relies. As was

well said by Chief Judge Church in an analogous case:

"By taking the stand as a witness, while he may subject himself to the rules applicable to other witnesses, he is not thereby deprived of his rights as a party. . . . Especially ought this protection to be afforded to persons on trial for criminal offenses, who often by a species of moral compulsion are forced upon the stand as witnesses, and being there are forced to run the gauntlet of their whole lives on cross-examination, and every immorality, vice, and crime of which they may have been guilty, or suspected of being guilty, is brought out ostensibly to affect credibility, but practically used to procure a conviction of the particular offense with which the accused is being tried, upon evidence which might otherwise be deemed insufficient. Such a result is manifestly unjust, and every protection should be afforded to guard against it." *People v. Brown*, 72 N. Y., 571, 573. Many well considered cases sustain the general doctrine that the fact sought to be elicited from the party ought to be relevant to the issue. *People v. Croo*, 76 N. Y., 288, 290; *Hayward v. People*, 96 Ill., 492, 503; *Buel v. State*, 104 Wis., 132, 145; *Bailey v. State*, 67 Miss., 333; *State v. Carson*, 68 Me., 116; *State v. Gotfrudson*, 24 Wash., 398; *State v. Hale*, 156 Mo., 102, 108; *Bullock v. State*, 65 N. J. L., 557, 574; *State v. Barker*, 68 N. J. L., 19, 27; *Saylor v. Com.* 97 Ky., 184; *Clark v. State*, 78 Ala., 474, 481; *Thompson on Trials*, sec. 653.

The prejudicial effect of the admission forced from the defendant by the cross-examination permitted in this case is apparent. He had been shown to be an unlicensed and irregular practitioner, the sign on whose office door gave only a part of his name. The only direct testimony to his commission of the offense was that of the woman who said she went to his office of her own motion and asked to have the unlawful act performed. He met this by his practically unsupported denial. It is, therefore, quite probable that the balance may have been turned against him, by the admission that he had not only before been charged with the same offense, but also that the evidence against him had been sufficiently strong to induce two separate juries to find him guilty of the charge.

Proof of the actual commission of the first offense would not be admissible as furnishing evidence of motive in the perpetration of the one for which he was being tried. While such proof, or his admission of the former verdicts might tend to discredit him as a witness in his own or another's case, its chief, and necessarily damaging effect was to furnish the jury ground for an inference that he was guilty of the offense on trial, from the fact that he had, in all probability, committed a like offense before.

While the statute permitting an accused person to testify in his own behalf in a criminal case is a humane one, the exercise of the privilege is attended with some dangers, and these should not be increased by such a latitude of cross-examination as was permitted in this case. We are of the opinion that reversible error was committed in overruling the defendant's objections to this evidence.

5. One question remains that will necessarily arise on another trial. It is contended on behalf of the appellant that the woman, on whose

testimony the conviction depends, by procuring, or consenting to the unlawful operation, became an accomplice of the accused. The court entertaining a different view of the law, denied a special instruction to that effect. He, however, gave the jury the following instruction: "The jury are instructed that according to the testimony of Sadie Volk, while she is not an accomplice, strictly speaking, in as much as, from her own evidence, she morally implicates herself in the act, the jury should consider that circumstance as bearing on her credibility. And it is also the duty of the jury in considering all the other evidence in the case to consider the evidence tending to contradict, or to show that she has made statements conflicting with her present testimony as affecting the credit you should give her evidence."

The offense of procuring the miscarriage of a woman in this District is defined in section 809 of the Code as follows:

"Procuring a Miscarriage.—Whoever, with intent to procure a miscarriage of any woman, prescribes or administers to her any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health, and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or, if the woman or her child dies, in consequence of such act, by imprisonment for not less than three or more than twenty years."

By its terms this section applies to the person or persons committing the act which produces the miscarriage, and not to the person upon whom it is committed, notwithstanding it may be done with her knowledge and consent. Not being liable to indictment thereunder, she is not an accomplice in the legal sense. "An accomplice is one who is associated with another, or others, in the commission of a crime. Liability to indictment, under ordinary conditions, is a reasonable test of the legal relations of the party to the crime and its perpetrator." *Yeager v. U. S.*, 16 App. D. C., 356, 359; 28 Wash. Law Rep., 554. The offense charged in that case was sexual intercourse with a female under 16 years of age, and the latter was held not to be an accomplice, but the victim of the party committing the act.

Under similar statutes in many States it has been held that they do not apply to the woman whose miscarriage has been produced, though with her consent, but solely to the person whose act produced it. She is regarded as his victim, rather than an accomplice. *Com. v. Wood*, 11 Gray, 85, 93; *Com. v. Follonsbee*, 155 Mass., 274, 277; *State v. Murphy*, 27 N. J. L., 112, 115; *State v. Hyer*, 39 N. J. L., 598, 601; *People v. Cone*, 87 Ky., 457, 490; *State v. Owens*, 22 Minn., 238, 244; *State v. Pearce*, 56 Minn., 226, 230; *Watson v. State*, 9 Tex. App., 237, 244; *Hunter v. State*, 38 Tex. Cr., 161.

The Supreme Court of Ohio takes a like view of the statute defining the offense, but holds the woman an accomplice by virtue of another provision of the Code which provides that, "Whoever aids, abets, or procures another to commit any offense may be prosecuted and punished as if he was the principal offender."

The appellant contends that the same rule applies here by virtue of section 908 of the Code which reads as follows: "In prosecutions for any criminal offense, all persons advising, inciting,

or conniving at the offense or aiding or abetting the principal offender, shall be charged as principals, and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be." By the common law, all persons who command, advise, instigate, or incite the commission of an offense, though not personally present at its commission, are accessories before the fact, and the object of the aforesaid section was to make all such persons principal offenders. For reasons of public policy it obliterated the common law distinction between accessories before the fact and principals. *Maxey v. U. S.*, 30 App. D. C., 63, 72; 35 Wash. Law Rep., 446. The section does not undertake to make one liable as a principal who could not be regarded as an accessory before the fact. As the victim of an unlawfully procured miscarriage was not an accessory before the fact, she is not indictable as a principal offender. The interpretation of the Ohio statute, given by the Supreme Court of that State, makes it quite different from the provision in our Code. All other persons procuring or instigating the perpetration of the crime in such manner as to make them accessories before the fact are subject to indictment as principal offenders. *Maxey v. U. S.*, 30 App. D. C., 64, 74; 35 Wash. Law Rep., 446. But, for the reasons before given, the victim of the crime is not. As the witness, Sadie Volk, was not an accomplice, the court did not err in refusing the instructions asked by the defendant. The instruction in regard to the credibility of the witness was as much as the defendant had a right to expect.

For the error pointed out, the judgment will be reversed and the cause remanded with direction to set aside the verdict and grant a new trial.

Reversed.

## DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

v.

CHARLES ROBINSON.

SUNDAY LAW; ACT OF MARYLAND OF 1725, CH. 16, SEC. 10, NOT IN FORCE.

The act of the legislative assembly of Maryland of 1725, chapter 16, section 10, imposing a penalty for working on Sunday, is no longer in force in this District. No. 1844. Decided January 21, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

MR. E. H. THOMAS and MR. F. H. STEPHENS for the plaintiff in error.

MR. E. S. DUVALL, JR., for the defendant in error.

Mr. Justice VAN ORSDDEL delivered the opinion of the Court:

This cause was brought here on writ of error to the Police Court of the District of Columbia. An information was filed therein, charging the defendant with the offense of working on Sunday. The statute, under which the prosecution was sought to be maintained, was an act of the Maryland legislative assembly of 1723, chapter 16, section

10, appearing in Abert's Compiled Statutes D. C., page 176. It is as follows:

"That no person whatsoever shall work or do any bodily labor on the Lord's Day, commonly called Sunday, and that no person having children, servants, or slaves shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's Day (works of necessity and charity always excepted), nor shall suffer or permit any children, servants, or slaves to profane the Lord's Day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations, and that every person transgressing this act, and being thereof convicted by the oath of one sufficient witness, or confession of the party, *before the Police Court* (a single magistrate) shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid."

The complaint was in the usual form, signed and sworn to by the corporation counsel. The defendant demurred to the complaint on several grounds, one of which was "that the said act of the Maryland legislature has never been enforced in this District, and by disuse has become obsolete." The police justice sustained the demurrer and dismissed the defendant. From that judgment the case was brought here on a writ of error by the corporation counsel. We think a consideration of the one ground of demurrer above cited will fully dispose of the questions involved in this case.

That a State has full authority in the exercise of its police power to legislate for the health, the morals, and the general welfare of its people, can not be disputed. Laws prohibiting labor on the Sabbath day have been upheld by the courts, not that such laws are intended to limit the freedom of the citizen as to his religious belief, or impose upon him any religious duty incompatible with the free exercise of the dictates of conscience, but to prescribe a rule of civil duty for all persons within the jurisdiction of the State upon the Sabbath day. The legislature of a State, or Congress within the District of Columbia, having the power to enact laws to promote good order, and protect the comfort, happiness, and health of the people has the undoubted right to designate the day of the week called Sunday and prohibit the performance of any labor thereon except works of necessity and charity. That the first day of the week, or the Sabbath day, is the one invariably selected as a day of rest in legislation of this character has a special significance. It is the day set apart for cessation from all secular employment by the Christian world. All society, which is the outgrowth of Christian civilization, recognizes the necessity of the observance of the Sabbath day. Our nation and the States composing it are Christian in policy, to the extent of embracing and adopting the moral tenets of Christianity as furnishing a sound basis upon which the moral obligations of the citizen to society and the State may be established. Recognizing that law can raise no higher standard of morals for the government of the individual than society itself, in the aggregate, has attained, it is only natural that the legislature should select as a day for general cessation from labor the same day that society by common consent has observed for centuries, whether that observance be the result of religious belief or otherwise.

The reason for legislation of this character, as generally recognized by the courts, is the neces-

sity of the State providing for the protection of the health, morals and general welfare of its citizens. As said by Mr. Justice Field in *Ex parte Newman*, 9 Cal., 502, when discussing the constitutionality of a statute regarding the observance of the Sabbath day, "Its requirement is a cessation from labor. In its enactment, the legislature has given the sanction of law to a rule of conduct, which the entire civilized world recognizes as essential to the physical and moral well-being of society. Upon no subject is there such concurrence of opinion, among philosophers, moralists and statesmen of all nations, as on the necessity of periodical cessations from labor. One day in seven is the rule founded in experience and sustained by science. . . . The prohibition of secular business on Sunday is defended on the ground that by it the general welfare is advanced, labor protected, and the moral and physical well-being of society promoted." In *Bloom v. Richards*, 2 Ohio, St., 387, Judge Thurman, delivering the opinion of the Supreme Court, of Ohio, said, "We are, then, to regard the statute under consideration as a mere municipal or police regulation, whose validity is neither strengthened nor weakened by the fact that the day of rest it enjoins is the Sabbath day. Wisdom requires that men should refrain from labor at least one day in seven, and the advantages of having the day of rest fixed, and so fixed as to happen at regularly recurring intervals, are too obvious to be overlooked. It was within the constitutional competency of the general assembly to require this cessation of labor, and to name the day of rest."

Thus, it will be observed, that it is not the policy of the law to enforce an observance of the Sabbath day because of its general observance by the Christian world, but to enforce a cessation from labor on one day in seven. It is within the power of the legislature to fix any other day in the week, and the law would be equally as effective for the purpose of its enactment. In the selection of the Sabbath day, the legislature has selected the day society generally recognizes as a day of rest, irrespective of any legal requirement. The constitutionality of this class of legislation can no longer be questioned. It has been universally upheld by the courts. *Mugler v. Kansas*, 123 U. S., 623; *Minn. v. Barber*, 136 U. S., 313; *Hennington v. Church*, 163 U. S., 229; *Pettit v. Minn.*, 177 U. S., 164; *Ex parte Andrews*, 18 Cal., 678.

While it is the legitimate prerogative of the legislature to impose upon society the civil duty of observing one day in seven as a day of rest, it is beyond its power to impose the observance of Sunday as a purely religious duty. In other words, while the legislature may very properly prescribe and impose upon the citizen obligations of a civil nature, it can not impose the same obligations as religious duties. If, therefore, the act in question was intended to enforce the observance of the Sabbath as a religious obligation, and not a civil duty, whatever power the colonial legislative assembly may have had to prescribe and enforce such a law, we are of the opinion that it can not be legally enforced under our present constitutional form of government. The Constitution of the United States guarantees to the citizen absolute religious freedom in that it forbids the enactment of any law respecting an establishment of religion, or that will prohibit the free exercise thereof.

With this distinction before us, let us analyze the manifest object and purpose of the statute before us. The act of which this section was a part was entitled "An act to punish blasphemers, swearers, drunkards, and Sabbath breakers, and for repealing the laws heretofore made for punishing such offenders." The first section provided "that if any person shall hereafter, within this province, wittingly, maliciously and advisedly, by writing or speaking blaspheme or curse God, or deny our Saviour Jesus Christ to be the son of God, or shall deny the Holy Trinity; the Father, Son, and Holy Ghost, or the Godhead of any of the Three Persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity or any of the Persons thereof, and shall be thereof convicted by verdict, or confession, shall, for the first offence, be bored through the tongue and fined twenty pounds sterling; . . . for the second offence . . . shall be stigmatized by burning in the forehead with the letter B, and fined forty pounds sterling; . . . and that for the third offence, the offender, being convicted as aforesaid, shall suffer death without the benefit of the clergy." The second section related to profane swearing in the presence of certain officers named, among which were ministers, vestrymen and church wardens. The third section prohibited drunkenness. The other sections, aside from the one here under consideration, related to the manner in which trials should be conducted, and the manner of enforcing the collection of fines and the infliction of punishment. The act then provided for the repeal of certain acts providing for "Sanctifying and Keeping Holy the Lord's Day, commonly called Sunday, and for the Punishment for Blasphemy, Profane Swearing, Cursing and Drunkenness."

Taking the entire act into consideration, we are forced to the conclusion that the object of this statute undoubtedly was to prevent a desecration of the Lord's Day, as it was called in the act, and not primarily to enforce a day of rest, which is the present policy of such laws as defined by the courts. The statute before us is part of a peculiar class of legislation that was enacted in many of the colonies during the seventeenth and the early part of the eighteenth centuries. The object of such legislation was not to bring about the purpose sought to be accomplished by the legislation of the present day, providing for a cessation from labor on one day in seven, but to enforce a strict religious observance of the Sabbath day. Such laws were the outgrowth of the system of religious intolerance that prevailed in many of the colonies. They prescribed religious and not civil duties. With the adoption of the Constitution and the establishment of constitutional governments in the States of the Union these laws dropped into disuse, and any attempt to enforce them was frowned upon by the courts. In the States and the District of Columbia, the legislatures and Congress have enacted laws in place of these colonial statutes that define the civil duties of the citizen in the observance of one day in seven (Sunday) as a day of rest. It is defined as a duty the citizen owes to society in promoting the health, morals, and general welfare of the people. The duty of observing the Sabbath day, as a religious obligation, is left with the individual, and is a matter beyond the pale of legislative interference.

It was admitted at bar that no former attempt had ever been made to enforce the statute in question, though it has been on the statute books of the District of Columbia for more than one hundred years. Numerous acts of Congress, applying to the District of Columbia, have been passed forbidding labor on Sunday, such as requiring barber shops to be closed, forbidding disturbance of religious meetings, requiring billiard and pool rooms to be closed on Sunday, regulating the playing of musical instruments on Sunday, forbidding the sale of liquor on Sunday, forbidding the shooting or carrying of guns on Sunday, forbidding the keeping of places of business open on Sunday or the sale of merchandise, except the sale of medicines in cases of necessity, and other similar acts forbidding the performance of labor on Sunday. Inasmuch as Congress has so generally defined the particular kinds of labor that it deems proper to prohibit within the District on Sunday, and these acts have been passed without reference to, or amendment of, the law in question, it is proper to regard the statute before us not only as obsolete, but as repealed by implication in such essential parts as an advanced and enlightened civilization justifies with due regard for the personal liberties of the citizen.

It is unnecessary to consider the other objections the defendant interposed to the sufficiency of the information. The judgment of the Police Court is affirmed.

EDWIN W. W. GRIFFIN ET AL.,

APPELLANTS,

v.

THE UNITED STATES EX REL. THOMAS B. LE CUYER.

EXCISE BOARD; HOTEL BARROOM LICENSE; MANDAMUS.

1. Where it appears that an application for a hotel barroom license is regular in form, and that all the requirements of the law have been satisfied, and it further appears that the applicant has not been convicted of keeping a disorderly place, nor twice convicted during the preceding license year of violating the terms of his license, the duty of the excise board in the premises is a mere ministerial one and they are without authority to refuse the application for license.
2. An order granting a writ of mandamus to compel the issuance of the license affirmed.

No. 1840. Decided February 4, 1908.

APPEAL from an order of the Supreme Court of the District of Columbia, at Law, No. 49,794, granting a writ of mandamus to compel the issuance of a liquor license.

Mr. E. H. THOMAS and Mr. H. P. BLAIR for the appellants.

Mr. L. A. BAILEY and Mr. HENRY E. DAVIS for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia granting a writ of mandamus to the excise board of the District requiring the issuance of a hotel barroom license.

The relator in his petition sets forth that since March, 1903, he has continuously been the lessee of premises No. 1413 Pennsylvania avenue n. w., in this city, known as the Columbia Hotel, "which

hotel, during all the time aforesaid, and from a time long prior thereto, to wit, for forty years continuously last past, has been and now is an established hotel or tavern having more than twenty-five chambers or rooms, to wit, forty-two chambers or rooms for the lodging of guests;" that a license was regularly issued to the relator for the year 1903 and regularly renewed for each license year down to and including the license year terminating on the 31st of October, 1906; that the relator then made application in conformity with law and the rules and regulations of the excise board for a renewal of his license, which application was subsequently denied. The petition closes with an appropriate prayer for relief.

The board in its answer admits all the material allegations of the petition, and avers that upon receipt of relator's application for a renewal of his license "the same was duly referred to the major and superintendent of police for the District of Columbia for report as to whether that officer was aware of any reason why the license should not be renewed." The report of that officer is attached to and made a part of the answer. The answer further avers that the board granted a public hearing "to the parties interested in the renewal of said license on the 7th day of September, 1907, at which hearing the said relator was present with counsel. That at said hearing these respondents determined as matter of fact his barroom had been open on Sunday; that liquor had been sold on Sunday; that lewd characters were permitted on the place, and that the reputation of the place was bad, and that the relator had been prosecuted in Police Court as appears from Exhibit 'C,' hereto annexed and prayed to be read as a part of this answer. That the relator himself tacitly admitted that lewd women were admitted to the house, but stated that he required good behavior of them while on the premises;" and that upon the conclusion of said hearing the board unanimously decided to reject said application. The report of the superintendent of police, referred to above and made a part of the answer, does not show that any arrests were made on or about the premises during the preceding license year, but it does show that the premises were used as a hotel during that year. A reference to Exhibit "C," referred to in the answer discloses that relator was not convicted of keeping a Sunday bar, but was permitted to forfeit the security he had deposited for his appearance in the Police Court.

The question for consideration is whether the board has authority under the statute to refuse an application for the renewal of a barroom license for a hotel containing twenty-five chambers for lodging guests, because of the reputation of the premises or applicant as determined by the board. The act of Congress of March 3, 1893 (27 St. at L., 563), as amended by the act of May 11, 1894 (28 St. at L., 75), establishes an excise board for the District.

Section 2 of the act provides that it shall be the duty of the board "to take up and consider all applications for license to sell intoxicating liquors and to take action on such applications, and the action of said board shall be final and conclusive."

Section 4 provides that every applicant for license shall file a petition, and prescribes what said petition must contain.

The first part of section 5 requires every applicant to file with his petition the consent of a majority of the real estate owners and housekeepers on the side of the square where the proposed barroom is to be located, and defines a barroom. Then follows the proviso under consideration, which reads:

"Provided, That any established hotel or tavern having twenty (now twenty-five) chambers for lodging guests shall always have the right to obtain for itself a license for a barroom on complying with the provisions of this act, and the petition in such case must be made by the owner or lessee of such hotel or tavern."

The section next provides that after such applicant shall have obtained the consent aforesaid and obtained a license, it shall not again be necessary for him to obtain such consent for a renewal of his license unless the majority of real estate owners and resident housekeepers aforesaid petition the board that "said barroom is not necessary and is objectionable." The next and last proviso in the section reads as follows:

"Provided further, That upon a conviction of such licensee of keeping a disorderly or disreputable place it shall be the duty of said excise board to revoke such licensee's license, but until such conviction such licensee's license shall not be revoked or taken away from him."

Section 13 provides:

"That any person, having obtained a license under this act, who shall violate any of its provisions, shall upon conviction of such violation be fined not less than fifty dollars nor more than two hundred dollars, and upon every subsequent conviction of such violation during the year for which such license is issued shall be fined a like amount, and in addition to such fine shall pay a sum equal to twenty-five per cent of the amount of the fine imposed for the offense immediately preceding, and have his license revoked, and in case of nonpayment of the fines and penalties above named shall be imprisoned in the jail of the District or work house for a period of time not exceeding six months, or till the same are paid. That after second conviction no license shall thereafter be granted to said party; Provided, That no minor under sixteen years of age shall be allowed to enter any place where liquors are sold other than a hotel, without the consent of the parent or guardian of such minor."

It is true, as contended by counsel for appellants, that the exercise of discretion by executive officers acting within the scope of their authority will not be questioned by mandamus, but is it equally true that when such officers exceed their authority and act without warrant of law, mandamus will lie? *U. S. ex rel. Daly v. Macfarland et al.*, 28 App. D. C., 569; 35 Wash. Law Rep., 81; *Garfield, Sec'y of Int., v. U. S. ex rel. Belle Frost*, perent term: 35 Wash. Law Rep., 771.

It has become a common practice for Congress to amend bills by simply preceding the amendment with "Provided." In fact, frequently independent legislation is engrafted on some bill by a resort to this expedient. *Georgia, etc., Co. v. Smith*, 128 U. S., 174.

The language employed in the proviso, that every established hotel of twenty-five chambers shall *always* be entitled to a license, is devoid of all ambiguity. Nor do we think that the context in any way modifies its plain import. Had it



been intended to merely exempt hotels from the provision in the first part of the section 5 in respect to obtaining the consent of property owners and housekeepers, it would have been a very easy matter to have done so by the use of appropriate language. The requirement in the proviso that "the provisions of this act" shall be complied with by the applicant for a hotel barroom license is inconsistent with the contention that the sole function of the proviso is to excuse him from complying with one of the most material provisions in the act. Had Congress intended this proviso to operate merely as exempting hotels from the provision immediately preceding, it is inconceivable that a compliance with all the provisions of the act should have been required in the proviso itself as a condition precedent to obtaining a license. It will be noted that the proviso does not require a compliance with the other provisions of the act, but does require a compliance with the provisions of the act. Congress was legislating for the capital city, in which are many hotels, and to prevent discrimination inserted this proviso. It was careful, however, to protect the public against unworthy licensees by inserting the last proviso in section 5, which makes it the duty of the board to revoke a license "upon a conviction of such licensee of keeping a disorderly or disreputable place." By conviction is meant a conviction before some judicial tribunal having jurisdiction of the offense. The proviso does not mean that the board may determine the question. Section 13 goes a step further and ordains that, if a licensee is twice convicted during the year for violating the terms of his license no license shall thereafter be granted him.

We see no merit in the contention of counsel for appellants that "the only logical effect to be given to the proviso of section 5 is that it withdraws the 'place for which a license may be granted or refused' from the consideration of the excise board," since the proviso expressly says that the petition in such case must be made "by the owner or lessee." It would be a very barren right if the statute contemplated a distinction between the place and the proprietor.

It appearing that the petition of the applicant was regular in form, and that all the requirements of the law had been satisfied, and it further appearing that the applicant had not been convicted of keeping a disorderly place, nor twice convicted during the preceding license year of violating the terms of his license, we think it follows that the duty of the board in the premises was a mere ministerial one, and that in refusing the application they exceeded their authority.

The order of the court below is, therefore, affirmed with costs.

Affirmed.

#### RECENT IMPORTANT BANKRUPTCY DECISIONS.

Reported in the January and February Numbers, American Bankruptcy Reports.

**Bankrupt—Examination of Alleged Under Section 21.**—In *re Crenshaw*, 19 Am. B. R., 266, holds that an alleged bankrupt prior to adjudication may not be required to submit to an examination under section 21 of the Bankruptcy Act touching his acts, conduct or property.

**How Testimony of Bankrupt Taken—Payment of Stenographer's fees.**—Whether the testimony of a bankrupt, upon the hearing of an application by the trustee to compel him to turn over certain property, shall be heard orally, taken in long hand, or by a stenographer, is within the discretion of the referee, according to the holding in *Matter of Goldstein*, 19 Am. B. R., 96, which also holds that where, in such case, the trustee has no funds, and the bankrupt claims to be absolutely without means, his motion that the trustee be directed to pay for the stenographer's minutes of the bankrupt's testimony and the referee's fees and disbursements will be denied.

**Criminal Law—Indictment of Bankrupt for False Swearing Before Special Commissioner—Immunity Under Section 7 (9).**—In the case of *Leon Wechsler v. United States*, 19 Am. B. R., 1, it was held that the immunity provision of section 7 (9) of the Bankruptcy Act, that no testimony given by a bankrupt upon his examination thereunder "shall be offered in evidence against him in any criminal proceeding," does not exempt him from criminal prosecution for giving false testimony upon such examination.

**Composition—Prior to Adjudication.**—In *Matter of Back Bay Automobile Co.*, reported 19 Am. B. R., 33, it is held that a composition can be effected before as well as after adjudication.

**Contempt—"Misbehavior" within U. S. R. S., Section 725—False Testimony and Evasive Answers, Etc.**—Where, upon the return of an order to show cause why a bankrupt should be adjudged guilty of contempt for false testimony upon his examination before a special commissioner and for vague contradictory, contemptuous and evasive answers, given in order to conceal assets of his estate, he files an answer denying the contempt and, after being permitted by the district judge to testify as to the acts and conduct charged against him, he is adjudged guilty of contempt and committed to jail, it is held, in *Matter of Bick*, 19 Am. B. R., 68, that he is not entitled to be discharged on habeas corpus, upon the ground that he had not been charged with "misbehavior" within U. S. Rev. Stat., sec. 725, as his conduct and testimony were as clearly misbehavior as if he had refused to testify at all.

**Referee—As Special Commissioner—Interest in Fees Does Not Disqualify.**—In *Matter of Strobel*, 19 Am. B. R., 109, it is held that a referee in bankruptcy is not disqualified from acting as a special commissioner to ascertain and inquire as to the value of property wrongfully obtained by a creditor because of interest in additional fees which he might receive from any property turned over to the trustees.

**Bankrupt Corporations—Cement Company Not Subject to Adjudication.**—In *re Toledo Portland Cement Company*, reported 19 Am. B. R., 117, holds that a corporation organized for the purpose of making and selling cement, but which, because of financial embarrassment, has not been able to exercise its franchise, and where no manufacturing has ever been done, is not subject to adjudication as an involuntary bankrupt.

**Debts—Priority—Wages—Section 64b (4), as Amended 1906.**—In the case of *In re Photo Engraving Co.*, 19 Am. B. R., 94, it has been held that the amendment of 1906 to section 63b (4) of the Bankruptcy Act, giving priority to the wages



due to "traveling or city salesmen" and earned within the three months' period, is not retroactive, and a claim for such wages filed in a bankruptcy proceeding instituted before said amendment, is not entitled to priority.

**Petition for Voluntary Adjudication in Bankruptcy—Motion for Leave to Withdraw Former Discharge "Within Six Years."**—Where, within five years of his discharge, a voluntary bankrupt is again adjudicated a bankrupt, upon his own petition, it has been held in *Matter of Smith*, 19 Am. B. R., 63, that his motion for leave to withdraw the proceedings because he could not obtain a discharge therein "within six years" after the granting of the former discharge, will be denied where his creditors object.

**Stay—Supplementary Proceedings—Motion to Vacate.**—Where proceedings supplementary to execution are instituted upon a judgment for a debt provable and dischargeable in bankruptcy, are stayed upon the adjudication in bankruptcy of the judgment debtor, it has been held, in *re Burke*, 19 Am. B. R., 51, he is entitled to have the stay continued, and to have the matter disposed of in the bankruptcy proceeding, and that a motion by the judgment creditor to vacate the stay will be denied, but without prejudice to an application for the examination of the bankrupt or third parties in the bankruptcy proceeding.

**Receiver—Expenses—Objection of Wage Claimants.**—Where a receiver and his attorneys, in obtaining property of an estate in bankruptcy, have apparently acted according to their best judgment, and upon sufficient cause at the time, it is held, in *re Krause*, 19 Am. B. R., 93, that they will be allowed their reasonable and necessary expenses, though only enough remains to pay wage-claimants in part.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices

##### FIRST INSERTION.

H. W. Sohon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Denis J. Stafford, Deceased.  
No. 15,004. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Helen C. Whitton, it is ordered this 18th day of February, A. D. 1908, that James T. Stafford, J. Raymond Stafford, and John Stafford, and all others concerned, appear in said court on Monday, the 16th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-8t

#### Legal Notices.

Wolf & Cohen, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of Washington, D. C., has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharina Margareta Amberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of February, 1908. JOHN C. AMBERGER, by Wolf & Cohen, Attorneys, 700-706 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,014. Administration. [Seal]. 7-8t

Michael J. Keane, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. MARY LANGLEY, 100 2d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,911. Administration. [Seal]. 7-8t

James A. Toomey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

In re Estate of Margaret Donohoe, Deceased.  
No. 14,448. Administration.

Upon consideration of the report of James J. O'Connor, executor, filed herein on February 8th, 1908, reporting the sale of part of lot six (6), in square number 51, to Margaret W. Hoeler for the sum of two thousand nine hundred dollars (\$2,900.00), net, it is, this 13th day of February, A. D. 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before March 14th, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day. [Seal] In The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 7-8t

Isaac R. Hitt, Jr., Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward M. Truett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of February, 1908. ISADORA L. TRUETT, 1815 Clifton st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,827. Administration. [Seal]. 7-8t

W. R. Reilly, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Elizabeth Hecht, Complainant, v. Victor Hecht, Defendant. Equity No. 27,534.

The object of this suit is to obtain a divorce from the bond of marriage with the defendant, Victor Hecht, on the grounds of adultery. On motion of the complainant, by William B. Reilly, her solicitor, it is, this 4th day of February, A. D. 1908, ordered that the defendant, Victor Hecht, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order of publication be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 7-8t

**Legal Notices.****Children & Fenning, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adolph Wolschendorf, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. FREDERICK A. FENNING, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,895. Admn. [Seal.] 7-3t

**J. C. Mattingly, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of C. Louise Dahler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. GUSTAV H. DAHLER, Bladensburg, Md.; HENRY C. DAHLER, 285 N. J. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,892. Administration. [Seal.] 7-3t

**Richard P. Whiteley, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of New York City, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of H. Bowyer McDonald, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of September, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. DONALD McDONALD, Admr., care of R. F. Shepard, 819 17th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,322. Administration. [Seal.] 7-3t

**Jos. H. Stewart, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Outlaw, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. LIZZIE OUTLAW, 1787 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,900. Administration. [Seal.] 7-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cecilia Howard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of February, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Thomas R. Jones, President; GEORGE HOWARD. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,937. Admn. [Seal.] 7-3t

**Legal Notices.****Birney & Woodard, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
William H. Spelshouse, Complainant, v. The Unknown  
Heirs and Devisees of Henry Bradford et al.  
No. 27,568. Equity.**

The object of this suit is to establish the title of the complainant against the defendants by adverse possession lot three (3) in square 660, in the city of Washington, D. C. On motion of the complainant, it is, this 10th day of February, 1908, ordered that the defendants, J. F. Hilton and William M. Harper, cause their appearance to be entered on or before the fortieth day exclusive of Sundays and legal holidays occurring after the date of the first publication of this order, and that the defendants, the unknown heirs and devisees of Henry Bradford, deceased, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of the order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Washington Times. By the Court: HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 7-3t

**E. Hilton Jackson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Stutz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of February, 1908. JOHN A. STUTZ, 1645 13th st., Wash., D. C.; GEORGE F. STUTZ, 476 State st., Albany, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,132. Administration. [Seal.] 7-3t

**F. H. Stephenson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Webster, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of February, 1908. AUSTIN B. CHAMBERLIN, 438 8d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,035. Admn. [Seal.] 7-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, which was, by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Samuel Beckley Holabird, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 3d day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of February, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,223. Administration. [Seal.] 7-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Woodbury Blair, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Morton Mitchell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ELIZABETH PATTERSON MITCHELL, care of Woodbury Blair, Corcoran Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,086. Administration. [Seal.] 7-8t

**Darr & Peyser, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine McCarthy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. RICHARD A. CURTIN, 706 G St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,001. Administration. [Seal.] 7-8t

**H. Winship Wheatley, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna J. Seymour, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. ELIZA OTTOSEYMOUR, 1630 19th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,063. Administration. [Seal.] 7-8t

**SECOND INSERTION.**

**A. E. Rowell, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the State of Maryland and of the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alfred W. Rowell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. AMBROSE ROWELL, West Falls Church, Va.; ELIAS ROWELL, Hyattsville, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,986. Administration. [Seal.] 6-8t

**Irwin B. Linton, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alpheus Middleton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. FRANK D. MIDDLETON, care of Barber & Ross, 11th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,027. Administration. [Seal.] 6-8t

**Legal Notices.**

**James H. Taylor, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine Ruppert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. JAMES H. TAYLOR, 1419 G St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,600. Administration. [Seal.] 6-8t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel W. Stinemets, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of January, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,972. Administration. [Seal.] 6-8t

**Wm. M. Offley, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert I. King, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. MARY M. PATON, care of Wm. M. Offley, 317 4 1/2 St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,012. Admn. [Seal.] 6-8t

**Lambert & McLean, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Petronilla M. Fenwick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. RUDOLPH H. YEATMAN, 410 5th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,696. Administration. [Seal.] 6-8t

**Wm. D. Hoover, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lizzie Dewey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of January, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by George Howard, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,943. Administration. [Seal.] 6-8t

**Legal Notices.**

**Lyon & Lyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of David Roberts, Deceased.**  
**No. 14,941. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Charles F. Parker, it is ordered this 5th day of February, A. D. 1908, that Henry Walker and the unknown heirs at law and next of kin of David Roberts, deceased, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD,**

[Seal] Justice. Attest: James Tanner, Register of the Probate Court. 6-St

**Ralston & Siddons, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**American Security and Trust Company v. Eben Grant Townsend et al. No. 27,546. Equity Doc. 61.**

**ORDER OF PUBLICATION.**

The object of this suit is to distribute, under the order of the court, certain trust funds and securities amounting in the aggregate to about four thousand (4,000) dollars, held by the complainant as trustee under an agreement in trust between the defendants, Eben Grant and Eddy B. Townsend, as set forth in the bill of complaint filed herein. On motion of the complainant, it is, this 5th day of February, A. D. 1908, ordered, that the defendant, Eben Grant Townsend, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order shall be published, at least once a week for three successive weeks

[Seal] in The Washington Law Reporter and The London Times. (Signed) **HARRY M. CLA-BAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 6-St

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah S. Sampson, Deceased.**  
**No. 14,969.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary C. Smith, it is ordered this 6th day of February, A. D. 1908, that William B. Smith, Edwin B. Smith, Charles W. D. Smith, Lewis E. Smith, Clara S. Bosworth, Harold Smith, William Smith, Frank Smith, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: James Tanner, Register of Willa. 6-St

**Gordon & Gordon, Erskine Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Agnes Kayser v. Agnes M. Albrecht.**

**Equity No. 27,483.**

The object of this suit is to sell for partition the property of which Elizabeth Christina Jacobi died seized, namely, part of lots 169 and 171 in Beatty and Hawkins' addition to Georgetown in square 1254, lot 2 in George W. Riggs' subdivision of original lots 161, 162, and 163, in Beall's addition to Georgetown in square 1211, and part of lot 40 in Peter, Beatty, Threlkeld and Deakins' addition to Georgetown in square 1221, all in the city of Washington, in the District of Columbia. On motion of the complainant, it is this 5th day of February, A. D. 1908, ordered that the defendants, Evelina Meyers and Mary Nirod, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. **ASHLEY M. GOULD**, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 6-St

**Legal Notices.**

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Chandler Bancroft Davis, Deceased.**  
**No. 14,968.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederica Gore Davis, it is ordered, this 5th day of February, A. D. 1908, that Horace Davis, Andrew McFarland Davis, Girardi Davis, Hasbrouck Davis, Chandler Davis, Eliza Bancroft Davis, Louise Bancroft Davis, John Chandler Bancroft Davis, Bancroft C. Davis, Arthur Edward Davis, Edwin Loring Sprague, Jr., Ruth Davis Sprague, Henry Bancroft Sprague, infant, Richard Warren Sprague, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned,

[Seal] the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: James Tanner, Register of Willa. 6-St

[Filed February 6, 1908. J. R. Young, Clerk.]

**C. C. James, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**John M. Herfurth et al., Complainants, v. Unknown Heirs, Devisees, and Alienees of Benjamin Stoddert, John Rochford, Henry Burford, Defendants.**  
**Equity No. 27,575.**

The object of this suit is to declare the title to part of lot nine (9), in square five hundred and thirty-eight (538), beginning for the same at a point on south F street twelve (12) feet and six (6) inches from the east line of said lot nine (9) in said square; thence running west twelve (12) feet and six (6) inches; thence north seventy-nine (79) feet and six (6) inches to an alley; thence east twelve (12) feet and six (6) inches; thence south seventy-nine (79) feet six (6) inches to the place of beginning, in the city of Washington, District of Columbia, to be good in fee simple in the complainants by reason of adverse possession thereof for more than twenty-two years. On motion of the complainants, by C. Clinton James, their solicitor, it is, by the court, this 6th day of February, A. D. 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of Benjamin Stoddert, of John Rochford, and of Henry Burford cause their appearances to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the case will be proceeded with as in case of default. A copy of this order shall be published once a week for four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-St

**Hargrove & Morris, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Carroll D. Wright and John Bruce McPherson, Executors and Trustees, Complainants, v. Charles Wallace Stilwell et al., Defendants.**

**No. 27,580. Equity Docket No.—**

The object of this suit is to obtain a decree construing the will and codicil of Anna M. Colman, formerly of the District of Columbia, deceased, and directing the executors how to distribute the estate of said deceased. On motion of the complainants, it is this 6th day of February, A. D. 1908, ordered that the defendants, Charles Wallace Stilwell, William Wallace Stilwell, Caroline E. Wright, Isabella Wilbur Pyfer, Carrie Loomis Schober, and all persons having or claiming to have any interest in said estate, or any claims or demands under said will and codicil as legatees, devisees, heirs, or representatives, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star. By the Court: **HARRY M. CLA-BAUGH**, Chief Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-St

**Legal Notices.**

Nelson Wilson, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.In re Estate of Richard Henry Lansdale, Deceased.  
Administration, No. 14,881.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Stokes Lansdale, it is ordered this 31st day of January, A. D. 1908, that Clayton V. Sayre, Ella Hargrove Sayre, E. Lelola Baxeres, Lola M. Hobbs, George Harold Hobbs, George W. Huddleson, Harry Wright Huddleson, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] said return day. ASHLEY M. GOULD, Justice. A true copy.  
Attest: James Tanner, Register of Wills. 6-3t

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna S. Mallett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. FRANK B. KING, 1442 R. I. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,901. Administration. [Seal.] 6-3t

Irving Williamson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Macdaniel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. NORRIS MACDANIEL, 409 15th st., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,021. Administration. [Seal.] 6-3t

Children &amp; Fenning, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of John W. Crawford, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. GEO. S. WILSON, Oak Grove, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,018. Admn. [Seal.] 6-3t

George F. Havell, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry W. Reid, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. GEORGE F. HAVELL, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,060. Administration. [Seal.] 6-3t

**Legal Notices.**

Darr, Peyser &amp; Curtin, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.Estate of Mary J. Kennedy, Deceased.  
No. 14,990. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Darr, it is ordered this 8d day of February, A. D. 1908, that William Kennedy, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 6-3t

[Filed February 4, 1908. J. R. Young, Clerk.]

R. Ross Perry &amp; Son, Solicitors

In the Supreme Court of the District of Columbia.  
In re Dissolution of The Columbia Fire Insurance  
Company of the District of Columbia.

No. 27,590. Equity.

It appearing to the court that application has been made to the court in the above entitled cause for a voluntary dissolution of the body corporate, The Columbia Fire Insurance Company of the District of Columbia, and it appearing to the court that such application, together with the accompanying accounts, inventories, and affidavit required by law have been filed in this court, it is accordingly upon motion of Messrs. R. Ross Perry & Son, attorneys for the petitioner, this 4th day of February, 1908, ordered that all persons interested in the said corporation, The Columbia Fire Insurance Company of the District of Columbia, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 10th day of March, 1908, why the said body corporate should not be dissolved; further it is ordered that a notice of this order shall be published in The Washington Post and The Evening Star, papers of general circulation of the said District, and also in The Washington Law Reporter, weekly for three successive weeks, the first insertion to be not less than

[Seal] one month before the said 10th day of March, 1908, being the day fixed for showing cause as aforesaid. ASHLEY M. GOULD, Justice. A true copy.  
Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 6-3t

William C. Prentiss, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas F. Stephenson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of February, 1908. JANIE S. STEPHENSON, 2016 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,106. Admn. [Seal.] 6-3t

Supreme Court of the District of Columbia,

Holding Probate Court.

[This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Margaret A. Simon, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of February, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of February, 1908. HENRY W. SOHON, 844 D St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,112. Administration. [Seal.] 6-3t



**Legal Notices.**

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Fogarty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of February, 1908. JOHANNA FOGARTY, 2112 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,904. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Randall B. Corbin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ELLA A. BASSFORD, 414 10th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,984. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Elizabeth Kohler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ROSA E. FAULKNER, 230 W st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,006. Administration. [Seal.] 6-3t

**THIRD INSERTION.**

**William B. Reilly, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of William Dacy, Deceased.**  
**No. 14,779.**

**ORDER OF PUBLICATION.**

The object of the petition filed in this cause is to sell the real estate owned by the decedent for the payment of debts, the petition being filed by the administrator. On motion of the administrator it is, this 29th day of January, A. D. 1908, ordered that the unknown heirs and next of kin of William Dacy, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published at least once a week for three successive weeks

[Seal] In The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 5-3t

**T. K. Hackman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of David K. Hackman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of January, 1908. TURNER K. HACKMAN, Staunton, Va.; WM. J. FRIZZELL, 42 V st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,901. Administration. [Seal.] 5-3t

**Legal Notices.**

**B. F. Leighton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret E. Rankin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of January, 1908. ARCHIBALD M. McLACHLEN, 2800 Ontario Road; FIRMEN R. HORNER, 1300 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,880. Administration. [Seal.] 5-3t

**R. Ross Perry & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Georgeanna Dishman, sometimes known as Georgeanna Bowles, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of January, 1908. JULIA BUTLER, 1888 Waverly Place N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,890. Administration. [Seal.] 6-3t

**Alexander H. Bell, Wm. E. McKenney, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas A. Rover, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21th day of January, 1908. MARY E. ROVER, 49 I st. N. W.; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,978. Admn. [Seal.] 6-3t

**McNeill & McNeill, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Driggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of January, 1908. MARY EDDY DRIGGS, 2336 Mass. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,907. Administration. [Seal.] 5-3t

**Joseph J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John M. Clapp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of January, 1908. ANNA F. CLAPP, 1024 Vermont ave.; JOSEPH J. DARLINGTON, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,167. Administration. [Seal.] 5-3t

**Legal Notices.****FIFTH INSERTION.**

Alex. Muncester, Gittings & Chamberlain, Solicitors in the Supreme Court of the District of Columbia. Andrew W. Kirk et al., Complainants, v. Alice C. De Vaughn et al., Defendants. Equity, No. 27,423.

The object of this suit is to partition the following described property according to the respective interests of the parties hereto and for a receiver and accounting, viz: All that portion of lot 21, square 378, beginning at the northeast corner of said lot; thence south along the west line of 9th street 19 feet 6 inches; thence east 4.5 inches; thence north 19 feet 6 inches; thence east along the south line of E street to place of beginning. All those parts of lots 20 and 22, square 378, beginning at northeast corner of lot 22; thence south along the west line of 9th street 25.54 feet; thence west 110 feet; thence north 25.54 feet; thence east to beginning. All of lots 1 and 2, square 483. On motion of the complainants it is this 6th day of December, 1907, ordered that the defendants, Alice C. De Vaughn, Iola P. Spaulding, Frank De Vaughn Phillips, Ernest S. Bartlett, John H. De Vaughn, and the unknown heirs, devisees, and devisees of William F. De Vaughn, Jr., and Jane Davis, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in

The Washington Law Reporter and The [Seal] Washington Post. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk.

dec 13-20; jan 10-17; feb 14-21

Geo. Francis Williams, Solicitor in the Supreme Court of the District of Columbia. William H. McCray, Complainant, v. John R. Tucker et als., Defendants. Equity No. 27,586.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession to lots twenty (20), twenty-one (21), and twenty-two (22), in Henry A. Willard's recorded subdivision of square one hundred and fifty-one (151), in the city of Washington, District of Columbia. On motion of the complainant, it is, this 17th day of January, 1908, ordered that the defendants, John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, St. George Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred D. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Tallafarro, Julia Clark Tucker, Nathaniel Beverly Tucker, William F. P. Tucker, John R. Bryan, Della Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret B. Bryan, St. George Tucker, C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Perronneam Brown, Virginia C. Braxton, St. George Tucker, Coalter, Ellis Tucker, James Tucker, Beverly Tucker, Jane S. Tucker, Maggie Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the defendants, the unknown heirs, devisees, or aliases of such of the above-named defendants that are dead, and the unknown heirs, devisees, or aliases of Thomas Tudor Tucker, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week in

five successive weeks prior to said return day [Seal] In The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

8-51

**Legal Notices.****SIXTH INSERTION.**

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia. Katherine M. Ruppert, Complainant, v. The Unknown Heirs, Alienees, and Devisees of Andrew Coyle, Deceased, Defendants.

No. 27,443. In Equity.

The object of this suit is to establish title by adverse possession to lot sixty-one (61) of T. Franklin Schneider's subdivision of square four hundred and eighty-two (482), as per plat recorded in book 17, folio 122, of the records of the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 4th day of December, A. D. 1907, ordered that the defendants cause their appearance to be entered herein on or before the first Tuesday of March, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter and The Washington Post twice a month for the months of December, 1907, January and February, 1908. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk.

dec 6-13, '07; jan 8-10; feb 6-13, '08

Philip Walker, Solicitor

In the Supreme Court of the District of Columbia.

Horace K. Fulton v. The Unknown Heirs, Devisees, and Alienees of Henry Barford and William O'Neale. In Equity, No. 27,443.

The object of this suit is to establish title in the complainant by adverse possession of lot 144 in Mary S. Milliken's subdivision of lot 49 in commissioners' subdivision of original lot 17, in square 510, in the City of Washington, District of Columbia. On motion of the complainant it is, this 11th day of December, 1907, ordered that the defendants, the unknown heirs, devisees and alienees of Henry Barford and William O'Neale, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in The Washington Law Reporter and the Washington Post.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

dec 13, 20, 27; jan 17, 24; feb 14, 21.

**SEVENTH INSERTION.**

Howard Boyd, Solicitor

In the Supreme Court of the District of Columbia.

Charles E. Tribby v. Caroline S. Bowles Murphy, alias Carrie S. Bowles Murphy, and the Unknown Heirs, Devisees, and Alienees of John Arnot, Deceased, Defendants. Equity No. 27,808.

The object of this suit is to establish title in the complainant by adverse possession to lot seven (7) in the subdivision of square three hundred and eight (308) in the city of Washington, District of Columbia, as recorded in subdivision book 10 at page 92, of the records of the surveyor of said District. On motion of the complainant, by Howard Boyd, his attorney, it is this 21st day of November, 1907, ordered that Caroline S. Bowles Murphy, otherwise known as Carrie S. Bowles Murphy, and the unknown heirs, devisees, and alienees of John Arnot, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month and twice a month during the next two months in The

Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

nov 22-23; dec 6; jan 8-10; feb 7-14

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WASHINGTON, D. C. - - - FEBRUARY 21, 1908

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### Insurance Agents—Licenses—Mandamus.

The Court of Appeals of this District in an opinion by Mr. Chief Justice Shepard, has affirmed the judgment of the court below in the case of *Drake v. United States ex rel. Bates et al.* The appeal was from a judgment awarding a writ of mandamus to compel the appellant, as Superintendent of Insurance for the District of Columbia, to issue to the appellees a license entitling them to carry on the business of insurance agents in this District. The fact of the tender by the appellees of the statutory license fee of \$50 was admitted, but the license was refused for alleged non-compliance with certain regulations made by the appellant as Superintendent of Insurance. The Court of Appeals, affirming the decision below, holds that the regulatory powers of the Superintendent of Insurance are limited by law to insurance companies and do not extend to persons seeking to engage in business as agents and brokers under a general insurance license; that all that persons proposing to take out such a license are required to do is to apply therefor to the superintendent and pay the statutory fee, and they then have power to make arrangements for insurance with any company authorized to do business in this District upon such terms and with such

general or special authority as may be agreed upon. It was further held that no power is given the Superintendent of Insurance to impose, as conditions precedent to the issue of a license, the conditions attempted to be imposed upon the petitioners in this case. It is the right of any citizen to engage in business as an insurance agent upon tendering the fee required by law to the proper officer charged with the duty of receiving it and issuing the license. That officer has no power to add to the requirements of the law, but it is his plain duty to receive the fee when tendered and issue the formal license required by law.

### Constitutionality of Congressional Appropriations.

A bill has recently been introduced in the House of Representatives by Mr. Littlefield, of Maine, conferring upon the Court of Appeals of this District or any justice thereof, jurisdiction to hear and determine the constitutionality or legality of any public expenditures or appropriation made by Congress. It is provided that a petition signed by ten citizens of the United States, of age, will be sufficient cause for the trial of such a case by the court, regardless of the fact whether or not the petitioners sustain any damage by reason thereof, against the head of a department, bureau, commission, any officer of this District, or any officer who has control of the expenditure of the money. The court is given authority to issue a permanent injunction restraining the expenditure in question, provided the final hearing shall warrant it. The court is to have power to make such rules and regulations for notice and proceedings as may be necessary; and it is provided that a justice of the court may issue a temporary restraining order pending the termination of the proceedings, with or without bond. The right of appeal from the decision of the Court of Appeals to the Supreme Court of the United States is given either party.

### Common Carriers—Transportation of Ferocious Animals.

In *Molloy v. Starin*, decided by the Court of Appeals of New York, and reported in the New York Law Journal, it is held the duty of a common carrier receiving ferocious animals for transportation to adopt reasonable precautions, proportioned to the nature of the freight, to prevent accidents while they are in its possession. The carrier does not, however, come under the rule applicable to the owner or keeper of such animals, of absolute liability for mischief done by them irrespective of the question of negligence.

## Court of Appeals of the District of Columbia.

### IN THE MATTER OF THE APPLICATION OF HENRY B. F. MACFARLAND, ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

#### CONSTITUTIONAL LAW; COURTS; IMPOSITION OF LEGISLATIVE POWER; WRIT OF PROHIBITION.

1. The duty of ascertaining the value of the plant of the Washington Gas Light Company and of its future extensions and enlargements, as the basis for increasing its capital stock, is a legislative duty, involving the exercise of no judicial power, in the constitutional sense, and can not therefore be imposed upon the Supreme Court of this District.
2. Under the provisions of Section 5 of the Act of Congress of June 6, 1896, a petition was filed in the Supreme Court of the District by the Washington Gas Light Company for the ascertainment of the value of its plant, etc., as the basis for the increase of its capital stock. Thereafter a petition was filed in this Court by the Commissioners of the District for a writ of prohibition to prohibit the Court below from entertaining the petition of the Gas Light Company. *Held*, that the duty of ascertaining the value of the plant, etc., was one that could not be imposed upon the Supreme Court of the District, and as the exercise of that power by that Court might possibly result in injury for which there is no other adequate remedy the writ of prohibition would issue as prayed; Mr. Justice VAN ORSBEL dissenting.
3. This Court having appellate jurisdiction over the orders, etc., of the Court below, it is not necessary that an attempt shall have been made to invoke that jurisdiction before it can be said to attach in order to authorize the issue of a remedial writ in aid thereof.

Original No. 283. Decided February 11, 1908.

HEARING on a petition for a writ of prohibition to prevent the court below from entertaining a petition by the Washington Gas Light Company for the ascertainment of value of its plant, etc., as the basis for increasing its capital stock. Writ issued.

Mr. E. H. THOMAS and Mr. HENRY P. BLAIR for the petitioners.

Messrs. R. ROSS PERRY & SON, Mr. R. H. GOLDSBOROUGH, and Messrs. LAMBERT & McLEAN, for the respondents.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This petition was filed December 11, 1907, by the Commissioners of the District of Columbia, praying for a writ of prohibition to issue to the Washington Gas Light Company and to Mr. Justice Ashley M. Gould, of the Supreme Court of said District, prohibiting the said Justice from entertaining the petition of the Washington Gas Light Company, presented under the provisions of an Act of Congress, approved June 6, 1896, for an ascertainment of the actual cash value of the plant, etc., as the basis for an increase of its capital stock.

A rule to show cause why the writ shall not issue was served upon said Company and said Justice, to which they have made returns.

From the petition and return the following facts appear:

The Washington Gas Light Company was incorporated by special Act of Congress on July 8, 1848, with an authorized capital of \$50,000. This stock has been increased from time to time until it amounts to \$2,600,000. On June 6, 1896,

Congress passed an Act concerning the sale of gas in the District of Columbia, the first four sections of which regulate the purity of the gas, and the price to be charged therefor.

Section 5 reads as follows:

"That neither the Washington Gas Light Company nor the Georgetown Gas Light Company shall hereafter issue any greater number of shares of stock than shall be equal to the actual cash value of said plants and necessary cost of the construction of future extensions or future enlargements of plants, which cash value and cost of extensions shall first be ascertained and authorized upon petition therefor to the Supreme Court of the District of Columbia, under such regulations as the chief justice and the justices thereof shall prescribe; also, if either of the said corporations shall desire hereafter to issue bonds upon their property, secured by mortgage or otherwise, upon petition therefor to said court, setting forth the necessity thereof and the amount of stock issued and outstanding, it may and shall be lawful for said court, or the chief justice and justices thereof, as the case may be, to permit the issuance of such bonds and mortgage as desired: *provided*, That the amount of stock and bonds issued shall not exceed the actual cash value of said plants and the cost of such extensions or enlargement of plants: *And provided further*, That the Washington Gas Light Company is hereby authorized to issue such additional amount of capital stock as will provide for the conversion into such stock of its outstanding certificates of indebtedness, which conversion of said certificates is hereby authorized to an amount not exceeding six hundred thousand dollars."

On June 10, 1907, the Georgetown Gas Light Company, the only other manufacturer of gas in the District of Columbia, filed its petition in the Supreme Court of the District praying the ascertainment of the cash value of its plant and the necessary cost of construction of future extensions or enlargements of the same, under the provisions of said Act.

Upon the presentation of this petition the Supreme Court of the District prescribed the following rules of procedure in such cases:

"Regulations prescribed by the chief justice and the associate justices of the Supreme Court of the District of Columbia for proceedings under section 5 of an Act of Congress entitled 'An Act relating to the sale of gas in the District of Columbia,' approved June 6, 1896.

"1. Petitions under the Act of Congress entitled 'An Act relating to the sale of gas in the District of Columbia,' approved June 6, 1896, shall be filed on the equity side of the Supreme Court of the District of Columbia.

"2. Upon the filing of the said petition one of the justices sitting on the equity side of the court shall fix a time for the initial hearing of the said petition; and thereupon the clerk of the court shall cause notice of the time and place of the said initial hearing and of the objects of the said petition to be published in two or more newspapers of general circulation in the District of Columbia once a week for three successive weeks prior to said hearing. He shall also cause a copy of the said petition, together with notice of the time and place of the said hearing, to be served upon at least one of

the Commissioners of the District of Columbia and upon the Attorney-General or Solicitor-General of the United States, all or any of whom shall be entitled to appear at said initial or any subsequent hearing, and to be represented by counsel, and to present such evidence upon the matter of the said petition as to them or any of them shall seem proper. Any one or more stockholders in every company filing said petition shall also be entitled to be heard in person or by attorney.

"3. At such initial meeting such justice shall determine the manner in which testimony in support of or against the matter of said petition shall be taken. Said justice may refer the matter of said petition to the auditor of this court, or to a special master, to take said testimony and to report the same with his findings thereon to said equity court, or said justice may take the said testimony in open court or may cause the same to be taken by an examiner in chancery.

"4. The final hearing of the said matter shall be had before any justice sitting upon the equity side of this court after at least 10 days' notice to the attorneys who may have appeared in the said case under the foregoing regulations.

"5. All proper costs and expenses (but not including counsel fees) incurred under these proceedings shall be paid by the petitioner, unless otherwise ordered by said justice."

November 5, 1907, the Washington Gas Light Company filed its petition under the Act aforesaid, for the ascertainment of the actual cash value of its plant and the cost of future extensions, or enlargement of the same. The day of hearing the petition was set for the second day of December, 1907, and notice was given by publication as provided in the rules of procedure aforesaid, as well as to the Attorney-General of the United States and the Commissioners of the District of Columbia. The Commissioners appeared by counsel and presented a motion to dismiss the petition on the following grounds:

(a) That the Act of Congress entitled "An Act relating to the sale of gas in the District of Columbia," approved June 6, 1896, under which said petition is filed, does not confer jurisdiction on the Supreme Court of the District of Columbia to grant any of the relief prayed for in and by said petition.

(b) That the power proposed to be conferred on the Supreme Court of the District of Columbia in and by section 5 of said Act is not judicial power within the meaning of Article III, Section 1, of the Constitution of the United States, and is therefore unconstitutional and cannot lawfully be exercised by the said Supreme Court of the District of Columbia.

(c) That said section 5 of the said Act intended to confer power on said Supreme Court of the District of Columbia as a judicial function and cannot therefore be construed as an authorization to the Justices composing said Court to exercise power thereunder in the character of commissioners or otherwise.

(d) That said section 5 of said Act attempts to impose a non-judicial function upon a court exercising the judicial power of the Constitution of the United States.

(f) That the proceeding in and by said petition is not a "case" within the meaning of

Article III, Section 2, of the Constitution of the United States.

This motion was denied on December 7, 1907, and the Court announced its intention to entertain the said petition and proceed thereunder, and appointed a day on or before which answer should be made thereto. No further proceedings appear to have been had, and the Commissioners, on December 11, 1907, filed this petition for a writ of prohibition. The Washington Gas Light Company in answer to the rule to show cause, avers the constitutionality of the Act of Congress aforesaid, and the jurisdiction of the Supreme Court of the District of Columbia thereunder to entertain its said petition; and prays that the petition for the writ of prohibition be dismissed.

The formal return of Mr. Justice Gould admits the facts alleged in the petition, but denies the power of this court to issue the writ of prohibition, because it has no appellate jurisdiction in the premises; and avers that if it has such jurisdiction the remedy of petitioners is by appeal. It also affirms the constitutionality of the Act of Congress and the jurisdiction of the Supreme Court of the District of Columbia thereunder.

The case stated presents two important questions for determination.

The first of these involves the constitutionality of the Act of Congress invoked in the original petition of the Washington Gas Light Company; that is to say, the power of Congress to impose upon the Supreme Court of the District of Columbia the duty of entertaining and acting upon that petition.

The second is whether this Court, if it should be of the opinion that the Supreme Court of the District is without jurisdiction in the premises, has the power to issue the writ of prohibition prayed for.

1. After careful consideration, we are of the opinion that the duty of ascertaining the value of the plant of the Washington Gas Light Company, and of its future extensions and enlargements, as the basis for increasing its capital stock, is a legislative one involving the exercise of no judicial power, in the constitutional sense, and cannot, therefore, be imposed upon the Supreme Court of the District of Columbia.

In the language of Mr. Justice Miller, delivering the opinion of the Court in *Kilbourn v. Thompson*, 103 U. S., 168, 190:

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or National, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and to no

other. To these general propositions there are in the Constitution of the United States some important exceptions." After enumerating these specific exceptions contained in the Constitution which are in the nature of checks and balances of power, he proceeds to say: "In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three preliminary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another. It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and, it is believed, not always without success."

The Supreme Court of the District of Columbia is one of the inferior courts whose creation is authorized by Section 1 of Article III of the Constitution, and possesses the same powers and exercises the same jurisdiction as the Circuit and District Courts of the United States. Code, Sec. 61, *et seq.*; *Benson v. Hinkel*, 198 U. S., 1, 14; *U. S. v. B. & O. R. R.*, 26 App. D. C., 581, 587; 34 Wash. Law Rep., 143. It is composed of six justices who are empowered to hold special terms as Circuit and District Courts of the United States, as well as for other purposes made necessary by the exclusive jurisdiction of the United States over the territory comprised in the District of Columbia. It is to be observed that Section 5 of the Act under consideration authorizes the petition of the Gas Company for the ascertainment of the value of its plant and future extensions to be filed in said Supreme Court, the investigation to be had under such rules and regulations as the chief justice and associate justices thereof may prescribe; and upon the ascertainment of such values the corporation is authorized to issue additional stock and bonds not exceeding the value so ascertained. The power is conferred upon the Court and not upon any particular justice thereof as a special commissioner. The right, therefore, to impose this power upon the Court, as such, depends upon whether it is a judicial one. It is no sufficient answer to say that the question for ascertainment is judicial in its character because it involves the consideration of evidence and the exercise of discretion. In dealing with a question of this kind, the Supreme Court of Connecticut has well said: "One controlling consideration in deciding whether a particular act oversteps the limits of judicial power is the necessary inconsistency of such acts with the independence of the judicial department, and the preservation of its sphere of action distinct from that of the legislative and executive departments. A main purpose of the division of powers between legislature and judicature, is to prevent the same magistracy from exercising in respect of the same subject the functions of judge and legislator. The

union of functions is a menace to civil liberty, and is forbidden by the Constitution. There is no intrinsic difficulty in recognizing a plain infraction of such prohibition. It is true that the different magistracies must act upon the same subjects; for every matter that may be dealt with by the State government may be acted on by each department thereof; but the action must be that belonging to the department whose powers are invoked. The main difficulties suggested in argument result from a failure to distinguish between the exercise of a legitimate power, and the employment of necessary means for exercising that power. The grant of the powers embraced in one of the great departments of government carries with it the right to use means appropriate to the exercise of that power. Any attempt to cripple the power through metaphysical classification of the means essential to its exercise must produce difficulties if not absurdities. For example: the power to make laws may require the accurate ascertainment of facts; for this purpose witnesses may be summoned, examined, and conclusions drawn from their testimony. This is a means peculiarly appropriate to the judicial power and the ordinary mark of an exercise of that power; yet when so employed by the legislature (without violation of other constitutional provisions) it is a means within the limits of the legislative power. But should the legislature, after the passage of an act, attempt by another act to adjudicate the rights of parties which have arisen under its provisions, such act, although only means appropriate to legislation might be employed, would be an exercise of judicial and not of legislative power. It would be void because it involves the Union, in the same magistracy, in respect to the same matter, of the functions of judge and legislator. Again, there are certain necessary executive acts which cannot be performed without the power of enforcing immediate obedience to an order authorized by law; the employment of legal restraint for the purpose of securing the essential immediate obedience, is a means peculiarly appropriate to the exercise of judicial power; but for such purpose, and subject to the restrictions of other provisions of the Constitution, it is a means within the limits of the executive power. *In re Application of Clark*, 65 Conn., 17; *Murray v. Hoboken Land Co.*, 18 How., 272. So, means of a legislative nature must be used by courts in establishing necessary rules of practice; and by executive officers in making regulations for the conduct of subordinates." *Norwalk St. Ry. Co.'s Appeal*, 69 Conn., 576, 594. In that case the statute authorized an appeal to the superior court from the action of the city authorities in refusing to approve the application of a street railway company for double tracking a portion of its line; and it was held that the court had no jurisdiction because it was not the exercise of a judicial power.

It is true that, in some instances, special tribunals have been created by Congress for the purpose of passing upon claims against the United States, from whose judgment, when final and conclusive, appeals will lie to the regular judicial tribunals. But in such instances the judicial power is involved, for the controversy

presents all the elements of a case in the Constitutional sense. *U. S. v. Coe*, 155 U. S., 76; *Bernardin v. Seymour*, 10 App. D. C., 294, 307; 25 Wash. Law Rep., 515; *U. S. v. Duell*, 172 U. S., 576, 583. The last cases cited affirm the right of appeal from the decisions of the Commissioner of Patents in refusing a patent or in determining the rights of adverse claimants to a patent in interference cases. The Commissioner here acts in a judicial capacity determining, in a formal proceeding, the right between the public and the applicant in one instance, and between contesting claimants in the other. Exercising this special judicial power in such cases, under the constitutional provision relating to patents, an appeal may be given from his judgments to a court whose judgment is final and must be executed. But in so far as his administration of his executive duties is concerned there could be no appeal to any authority save to that of his superior executive officer. Instances of this kind furnish no precedent for the case here presented. One can hardly conceive of a case where the duties required could be more aptly performed by a judicial tribunal than in the examination of the facts and the fixing of reasonable rates for common carriers, but such duties clearly belong to the legislative department and cannot be devolved upon the judiciary. *Reagan v. Farmers L. & T. Co.*, 154 U. S., 362, 397.

The only way in which the question can be determined by a court is when a suit is instituted by a carrier affected by a rate fixed by legislative authority; alleging that the same is unreasonable, in the sense that it is the destruction of property; and then the sole question is as to the reasonableness of the particular rate. There is no power to declare a reasonable rate for future observance.

The creation of corporations and their amendment, embracing the regulation of the amount of their capital stock, is a subject matter exclusively within the legislative power; and is a power that cannot be delegated, though under a general Act, complete in its details, certain functions relating to the final act of issuing the certificate of incorporation may be delegated to special agencies. In some of the States where county and municipal courts are, under constitutional authority, local administrative bodies, vested with functions ordinarily vested in county commissioners, supervisors, and the like, they may be empowered to pass upon amendments to municipal charters affecting their territorial limits. But such powers cannot be devolved upon strictly judicial tribunals, where the division of powers among the three departments of government provides for no such exception. *Shunway v. Bennet*, 29 Mich., 451, 464; *City of Galesburg v. Hawkins*, 75 Ill., 152; *State ex rel. Luley v. Simons*, 32 Minn., 540, 512. In the matter of *Incorporation of Ridgfield Park*, 54 N. J. L., 288, 291. See also, *In re Application of Cleveland, Mayor*, 51 N. J. L., 311, 316.

Congress has unlimited power to amend the charter of the Washington Gas Light Company, increasing its capital stock at will. If it preferred, instead of making its own inquiry into the values of the property, as a basis for action, to delegate that inquiry to the municipal offi-

cers of the District, it would have that power. Instead of delegating it to municipal officers, it has undertaken to convert one of the courts of the United States into such an agency. No judicial power is involved in the execution of the law. The determination to be made does not involve an asserted and contested right, and when made is not a final and conclusive one that may be given effect to by the power of the court. The petitioner is not bound to act upon the determination, nor is Congress bound by it. Should the petitioner desire to act upon the determination, Congress would probably have to pass an Act amending the charter to that end, or else provide for the amendment under a general law. In pursuing either course, it may adopt the ascertained valuation or change the amount of capital stock. On the other hand, it might repeal the former act and prescribe an entirely different rule. Again, the proceeding authorized is *ex parte*. No provision is made for opposing parties or a contest of the application. It is true the same court is authorized to make regulations for the procedure, but it is given no power to make the United States or the District of Columbia parties thereto. Nor could such discretionary power be delegated; it must be exercised by the Congress itself.

The particular question, as presented here, has not been determined by any court so far as we are advised, but we think that the governing principle is plain. *Hayburn's Case*, 2 Dall., 409; *U. S. v. Todd*, 13 How., 52; *U. S. v. Ferreira*, 13 How., 40; *Gordon v. U. S.*, 117 U. S., 697; *In re Sanborn*, 148 U. S., 223; *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, 485.

In *Hayburn's case* the action of the majority of the Circuit Courts was upheld in refusing to execute an Act of Congress requiring them to examine the evidence in support of claims preferred by soldiers of the Revolution to pensions granted to invalids by the Act, and to determine the amount of pension that would be equivalent to the disability shown. These pensions were to be certified to the Secretary of War, who was authorized to withhold the pension if he had cause to suspect imposition or mistake, and to report the case to the next session of Congress. This Act was amended immediately after the decision in *Hayburn's case*, by repealing the second, third and fourth sections of the Act of 1792, which gave rise to the questions stated in the note to that case, and provided another way of taking the testimony and deciding upon the validity of pensions granted by the former law, saving all rights to pensions which might be founded upon "any legal adjudications" under the Act of 1792. Certain of the judges had acted under the Act of 1792, holding that the intention of that Act was not to require judicial action, but to designate the judges of the courts, by official, instead of personal description, as commissioners, which positions they might accept or decline. In *Yale Todd's case* brought to determine the validity of their action as such commissioners, by action to recover money paid in accordance with their action, it was held, as in *Hayburn's case*, that the power sought to be conferred upon the Circuit Courts was not judicial power within the meaning of

the Constitution, and could not, therefore, be exercised by them; and, further, that the Act of Congress intended to confer the power as a judicial function, and could not be construed as authority to the judges to exercise the power out of court as commissioners. The result was a judgment for the recovery of the money.

In *U. S. v. Ferreira*, the Act of Congress to carry into effect the provisions of the treaty whereby Florida had been acquired required the judges of the Superior Court of San Augustine and Pensacola Districts to receive and adjust all claims arising under said treaty their decisions to be reported to the Secretary of the Treasury, who, on being satisfied that the claims are just and equitable, should pay them. An appeal was taken by the District Attorney of the United States, on their behalf, from one of such findings, which the Supreme Court dismissed for want of jurisdiction. Those territorial judges and not the courts were charged with the duty which it was held was not a judicial power. It was said:

"It is manifest that this power to decide upon the validity of these claims is not conferred on them as a judicial function to be exercised in the ordinary forms of a court of justice. For there is to be no suit; no parties in the legal acceptance of the term are to be made—no process to issue; and no one is authorized to appear on behalf of the United States or to summon witnesses in the case. The proceeding is altogether *ex parte*; and all that the judge is required to do is to receive the claim when the party presents it, and to adjust it upon such evidence as he may have before him, or be able himself to obtain. But neither the evidence nor the award are to be filed in the court in which he presides, nor recorded there; but he is required to transmit both the decision and the evidence upon which he decided to the Secretary of the Treasury; and the claim is to be paid if the Secretary thinks it just and equitable, but not otherwise. It is to be a debt from the United States upon the decision of the Secretary, but not upon that of the judge. It is too evident for argument on the subject, that such a tribunal is not a judicial one, and that the Act of Congress did not intend to make it one. The authority conferred upon the respective judges was nothing more than that of a commissioner to adjust certain claims against the United States; and the office of judges, and their respective jurisdictions, are referred to in the law, merely as a designation of the persons to whom the authority is confided, and the territorial limits to which it extends. The decision is not the judgment of a court of justice. It is the award of a commissioner." Again it was said: "The powers conferred by the Acts of Congress upon the judge as well as the Secretary are, it is true, judicial in their nature. For judgment and discretion must be exercised by both of them. But it is nothing more than the power ordinarily given by law to a commissioner appointed to adjust claims to lands or money under a treaty; or special powers to inquire into or decide any other particular class of controversy in which the public or individuals may be concerned. A power of this kind may be constitutionally conferred on a Secretary as well as on a Commissioner. But it is

not judicial in either case, in the sense in which judicial power is granted by the Constitution to the courts of the United States."

The proceeding in the particular case was before a United States District Judge under the amendatory Act of 1849, who sat as a commissioner, and it was held that the Act did not authorize him to convert a proceeding before a commissioner into a judicial one, and give an appeal from his decision to the Supreme Court. As we have seen, the Act under consideration, like that passed upon in *Hayburn's* and *Todd's* case, did not undertake to confer the power upon a Justice of the Supreme Court of the District as a special commissioner, but upon the Court, as a judicial power. The question, therefore, is not whether one of the justices of the Supreme Court may be charged, as a special commissioner, with the duty of making an inquiry and finding in a special matter submitted to him, as such, by Congress, but whether that duty can be imposed upon one of the courts of the United States? In *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, the other cases, before cited, were reviewed and their doctrine affirmed. In that case, the question was whether the Act of Congress authorizing the Interstate Commerce Commission, a tribunal charged with the power of inquiry into the reasonableness of the freight rates of common carriers engaged in interstate commerce, to call witnesses and require the production of books and papers, could confer upon the courts of the United States, upon the complaint of the Commission, the power to summon witnesses who had refused to answer the questions propounded by that body, and compel them to give evidence and produce papers, under the penalty of contempt. Agreeing that Congress could not impose upon the courts any duties not strictly judicial, it was held that the powers conferred by the Act in question were of that nature. It was said that they presented all the elements of a case as declared in *Osborne v. Bank*, 9 Wheat., 738, 819: "This clause enabled the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting in it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States." See also *Smith v. Adams*, 130 U. S., 173, where it was said that the term "cases" and "controversies" in the Constitution embraced "the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs."

Applying these principles the Court said: "The present proceeding is not merely ancillary and advisory. It is not, as in *Gordon's* case, one in which the United States seeks from the Circuit Court of the United States an opinion that 'would remain a dead letter and without any operation upon the rights of the parties.' The proceeding is one for determining the

rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this Court. And that judgment may be enforced by the process of the Circuit Court. Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the Government, rests upon the defendants, cannot be directly enforced except by judicial process. One of the functions of a court is to compel a party to perform a duty which the law required at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but in the words of Sanborn's case will be 'a final and indisputable basis of action,' as between the Commission and the defendants, and will furnish a precedent in all future cases. It will be as much a judgment that will be carried into effect by judicial process as one for money, or the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law required to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution."

There is no substantial ground for the proposition that the power extended to the Supreme Court of the District of Columbia is a judicial one in aid of the execution of a legislative Act as was the fact in *Brimson's case*. Congress had ample power to amend the charter of the Gas Light Company by increasing its capital stock and right to issue bonds, and to ascertain all the necessary or proper information leading to a just exercise of that power. If it preferred to have that inquiry made by some agency, it had the power to delegate it to the municipal officers of the District or some other administrative agency. The Act imposed no duty upon any one the performance of which, as in *Brimson's case*, could only be obtained by resort to the judicial power. The Act is an attempt to convert one of the courts into an administrative agency. No judicial power is invoked in the duty required by the Act. As before stated, the determination is not a final and conclusive one that may be executed by the power of the court. It is not a judicial decree. Unlike that in *Brimson's case*, the Act makes no case for the exercise of judicial power. The proceeding is *ex parte*. No provision is made for a contest of petitioner's request. The benefit which it might obtain is not the creation of a property right, but a mere license. No duty is imposed upon, or required of it. On behalf of the public interest, the Act in *Brimson's case*

imposed a duty upon all persons to give evidence before a Commission which had no power to enforce the attendance and obedience of witnesses, and could be invested with none. To make the Act effective by guarding against a refusal to obey its provisions, a judicial proceeding was authorized in the form of a regular case in which there is a complainant and a defendant. The Court was called upon, in a formal action, to determine a right, as between the respective parties, under the law, and to render a regular and formal judgment declaring that right, which judgment was binding and conclusive, and within the usual power of the Court to enforce. The proceeding presented all the essential elements of a case or controversy, in the constitutional sense—a complaint and a complainant, a defendant and a judge to decide and enforce.

Nor is there any analogy between the question in this case and that determined in another case on which the respondent relies. *Canada Northern Railway v. International Bridge Co., et al.*, 7 Fed. Rep., 653. The Act of Congress in that case authorized the construction and maintenance of a bridge across the Niagara River by the Bridge Company, and provided that all railway companies desiring to use the same should have equal rights and privileges in the passage of the same, and in the use of the machinery and fixtures thereof and all the appurtenances thereto under and upon such terms and conditions as shall be prescribed by the District Court of the United States for the Northern District of New York upon hearing the allegations and proofs of the parties in case they shall not agree. The Canada Southern Railway, one of those authorized to use said bridge, filed its petition against the Bridge Company, in the said court, alleging that it had been unable to agree with the Bridge Company upon the compensation therefor, and praying an adjudication of the terms upon which it might use the said bridge. Holding that Congress had complete power to make the provision for the use of the bridge, it was further held that Congress had the power to devolve upon the court the duty of determining the disputed question in regard to the compensation for its use. Judge Wallace said: "The rights are created and established by the Act; and this is the office of the legislative department. The power to adjudicate upon these rights, to ascertain, when controversy arises, their extent and value, and apply the appropriate remedy for their protection, is conferred upon the Court; and this is the peculiar province of the judicial department." Here we have a right, in the nature of property, created by law, a deprivation of that right, a formal complaint against the party denying it, filed in a court of competent jurisdiction, with power to determine the contested right and render a judgment or decree conclusive of the controversy, that could be enforced in the ordinary course of judicial proceeding.

We remark, in conclusion, that we fail to perceive any substantial difference between the statute under consideration in this case, and one that would require the same court to hear evidence relating to all the conditions of the business of the Gas Company, and, thereupon, to ascertain and declare its rate of charges to con-



sumers of gas in the District of Columbia. No one pretends that this last power could be conferred upon the court.

2. This brings us to the consideration of the second question: Has this Court the power to issue the writ of prohibition prayed for in this case?

Prohibition is one of the remedial prerogative writs of the common law to prevent an inferior court from assuming jurisdiction of a matter beyond its legal cognizance. We think it clear that the Court of Appeals cannot claim the possession of any inherent superintending or supervisory power over the inferior courts of the District of Columbia that would warrant the issue of such a writ. Whatever jurisdiction it has must be found in the Act of its creation, approved February 9, 1893, and Acts supplemental thereto. Code, Sections 221 to 230. This last section confers the "power to issue all necessary and proper remedial prerogative writs in aid of its appellate jurisdiction." In accordance with this view a writ of certiorari to the Police Court of the District was denied, because, at that time, there was no appellate jurisdiction over that court. *Ex parte Dries*, 3 App. D. C., 165, 177; 22 Wash. Law Rep., 301.

The Supreme Court of the United States has also refused to issue a writ of prohibition to the Supreme Court of the District of Columbia for the same reason. *In re Massachusetts*, 197 U. S., 482; see also, *In re Glaser*, 198 U. S., 171. However, Section 7 of the Act aforesaid (Code, Sec. 226), confers the right of appeal to this Court, at the instance of an aggrieved party, from any final order or decree of the Supreme Court of the District of Columbia, or any justice thereof; and, with some limitations this right of appeal extends to interlocutory orders. Having this appellate jurisdiction, it is not necessary that an attempt shall have been made to invoke that jurisdiction before it can be said to attach in order to authorize the issue of a remedial writ in aid thereof. The decisions of the Supreme Court of the United States bearing on this question have been ably reviewed by the Circuit Court of Appeals for the 7th Circuit in the well considered case of *Barber Asphalt Co. v. Morris*, 132 Fed. Rep., 945.

The conclusion of that Court, in which we concur, is thus stated:

"The reasons and decisions to which we have adverted have impelled our minds with irresistible force to the conclusion that the true test of appellate jurisdiction, in the exercise or in the aid of which the Circuit Court of Appeals may issue the writ of mandamus is the existence of that jurisdiction, and not its prior invocation; that it is the existence of a right to review by a challenge of the final decision, or otherwise, of the cases or proceedings to which the applications for the writs relate, and not the prior exercise of that right by appeal or writ of error." See also *Taylor, Jurisdiction and Procedure in the Supreme Court*, 548 *et seq.* It would be an unnecessary consumption of time to repeat the review of the cases supporting the doctrine that has been enounced.

A state of facts analogous to that in the case at bar is shown in one recently before the Supreme Court of the United States and decided since the submission of this case. In the Mat-

ter of *Reisenberg et al.*, decided January 13, 1908. The opinion delivered embraced two original applications for leave to file petitions for mandamus, or in the alternative for a writ of prohibition, to one of the Circuit Judges of the Second Circuit and to the Circuit Court commanding the dismissal of a bill of complaint against certain railroad companies, and all proceedings therein, and the vacation of injunctions and orders appointing receivers, as well as desisting from exercising any further jurisdiction over the said roads in said suit. The applicants for the writs were creditors of the railroad companies, and it appeared that they had applied for leave to intervene in said suit, alleging fraud and collusion between complainants and defendants therein to avoid the jurisdiction of the State Courts, and make a case cognizable in said Circuit Court. There applications for leave to intervene were denied; and from these orders no appeal could be prosecuted. The Court assumed jurisdiction without discussing the question, and denied the applications on their merits.

3. It is the well settled doctrine that the writ of prohibition will not issue in any case where there is another practical and adequate remedy. *In re Rice*, 155 U. S., 396, 403; *Alexander v. Crollat*, 199 U. S., 580; *N. Drexel Morris v. Scott*, 25 App. D. C., 88; *Holmead v. Barnard*, 29 App. D. C., 431, 432; 35 Wash. Law Rep., 370.

There appears to be no other remedy whatever in this case. While the Gas Company might have the right of appeal from an order of the court below refusing the relief prayed, there is no corresponding right of appeal from an order granting that relief, for there is no adverse party against whom the order runs. Neither the District Commissioners nor the Attorney-General, to whom notice of the proposed hearing was given, presumably as representatives of the public interests, could appeal from the order because they are not made by the Act parties to the proceedings. Their situation is something like that of the applicants in the *Matter of Reisenberg et al.*, *supra*, who had no appeal from the order refusing their intervention in a suit wherein they had an indirect interest only. Should the hearing contemplated in the court proceed to a final determination, the possible injury to the public interests, apprehended by the representatives thereof, could not be averted.

Notwithstanding the powers attempted to be conferred upon the Supreme Court of the District of Columbia are not judicial in the constitutional sense, they are quasi-judicial in that they are conducted, in a measure, under judicial forms and rules leading to the announcement of an order thereon by a judicial officer. The exercise of the power we have held to be unlawful. Therefore, as its exercise might possibly result in injury for which there is no other adequate remedy, we will order the writ of prohibition to issue to prohibit further proceedings in the court below, as prayed. The costs of this proceeding will be adjudged against the Washington Gas Light Company, one of the respondents. It is so ordered.

Mr. Justice VAN ORSDDEL dissenting:

I am unable to concur in the opinion and judgment of the court in this case, and I believe

that its importance warrants a statement of my views. The court has declared unconstitutional an Act of Congress conferring upon the Supreme Court of the District of Columbia judicial authority to ascertain and decree the value of the plant and future extensions of the Washington Gas Light Company, which valuation, under the Act, establishes a limitation beyond which the company may not go in the increase of its capital stock.

Before declaring a statute unconstitutional, courts should resolve every reasonable doubt in favor of its validity, and, if possible, so construe it as to carry into effect the legislative will. The Washington Gas Light Company is a public service corporation. Its regulation is a matter of the highest concern. No narrow view should be taken in construing the power of Congress in enacting laws for its proper control and to restrain it from disregarding the public interests. The capitalization of this company is an important factor in fixing the price at which gas shall be sold to the public. Congress arbitrarily could have provided, as it did in respect to this corporation in the past, for the increase of the capital stock to a fixed amount. This policy, in respect to the operation of a corporation in which the public is so vitally interested, without any attempt to ascertain the actual value of its property, would afford little protection to the public, and might lead to grave abuse. Congress could have conducted such an investigation itself and accordingly provided for the issue of additional stock, or it could have delegated the duty of making this investigation to an officer or body of officers appointed by its authority. It is within the power of the legislative department of the Government to impose upon the executive and judicial branches duties that, with equal propriety, might be performed by itself. It was not intended that the legislative, executive and judiciary departments should be disconnected wholly from each other. Unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation essential to a free government cannot, in practice, be maintained. Judge Story, in his Commentaries on the Constitution (Sec. 525), speaking of the division and assignment of the powers of government into three different departments, the legislative, the executive, and the judicial, says: "It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence, the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution."

The Constitution does not define or fix boundaries within which the three departments of the Government shall exclusively operate. No such a narrow construction was contemplated by its framers. Only general limitations were fixed within which the powers of the several departments were prescribed. No exact and complete delimitation of the several departments has yet been defined by the courts, and it is

doubtful if the problem will admit of a solution.

Thus it will be observed that Congress is given wide latitude in conferring special powers upon the co-ordinate branches of the Government. If Congress, in the Act in question, has legislated on those matters that exclusively belong to it, the execution of the law may properly be delegated away. It seems that the first test to be applied, is whether Congress has acted on all questions embraced in the Act which belong exclusively to the legislative department. It is true that a court has no power to fix the amount of capital stock a corporation may issue, or to place a limit upon the increase of capital stock. These are matters exclusively within the power of the legislature. But that power has been exercised by Congress in the case at bar, and a distinct limitation has been fixed. It shall not exceed the value of the plant and the future extensions. This value, when ascertained, constitutes the limitation definitely fixed in the Act. What has been imposed upon the court is to ascertain and adjudge by judicial determination the value of the plant and the future extensions.

That Congress could have conducted this investigation will not, I think, be disputed, but this fact does not prevent it from imposing the same duty upon the Supreme Court of the District of Columbia. In the case of *United States v. Duell*, Commissioner of Patents, 172 U. S. 576, the Court said: "Doubtless, as was said in *Murray v. Hoboken Land & Improvement Co.*, 18 How., 272, 284, Congress cannot bring under the judicial power a matter which, from its nature, is not a subject for judicial determination, but at the same time, as Mr. Justice Curtis, delivering the opinion of the court, further observed, 'There are matters involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' The instances in which this has been done are numerous and many of them are referred to in *Fong Yue Ting v. United States*, 149 U. S., 698, 714, 715, 728."

Here all the rights are created and fixed by Congress, and the power to adjudicate and determine the extent of the right, when the company seeks to avail itself of the privilege granted by the Act, is conferred upon the court. In the case of *In re Canada Northern Ry. Co. v. International Bridge Co. et al.*, 7 Fed., 653, power was conferred upon a District Court of the United States, in case of controversy, to determine and fix the compensation that should be paid for the use of a bridge. In the course of the opinion the court said: "The rights are created and established by the Act; and this is the office of the legislative department. The power to adjudicate upon these rights, to ascertain, when controversy arises, their extent and value, and apply the appropriate remedy for their protection, is conferred upon the court; and this is the peculiar province of the judicial department. It is argued that the Act attempts to confer upon the court the power to fix the rate of tolls which the International Bridge Company may charge, and that this is a legis-

lative and not a judicial function. If Congress had fixed the rate of tolls, as it had the right to prescribe the conditions upon which the franchise might be enjoyed, no other authority could have intervened to change these conditions. But suppose the Act had, in terms, provided that the bridge company might charge reasonable tolls, would not this have been a complete exercise of the legislative power, and would it not have remained for the judicial department to decide, when controversy should arise, what were not reasonable tolls? And if the Act had provided for such a determination by a judicial tribunal, would this have been unconstitutional? It seems to me clearly not. It is no less the exercise of judicial functions to prescribe a rule of conduct or protect the existence of a right during a future period, than it is to determine whether the right has been invaded in the past. It is one of the common offices of a court of equity to do this."

The subject here submitted for judicial determination is the value of the plant and its future extensions. The finding of the court on this point is final and conclusive upon the company, and furnishes a maximum limit beyond which the company cannot go in the issue of its capital stock. The judgment, instead of being intended to compel the company to comply by issuing stock, is intended to restrain it within proper bounds if it chooses to exercise the right granted by the Act. If the company refuses to accept and issue the stock, the same end is accomplished by the judgment, only that it has had a still greater restraining effect than if its limitations had been accepted. The judgment is not only binding upon the company, but it is conclusive. There is no way in which the capital stock can be increased except by strict compliance with the terms of the decree. Congress no doubt considered that the failure of the company to accept the terms prescribed by the Act could not in any manner prejudice the public interests. Hence, it will be observed that the finding of the court either restrains the company from taking any action whatever, or compels obedience to the court's decree. It is obvious that if the company should attempt to disobey the judgment of the court by issuing stock in excess of the value found by the court, the court would have jurisdiction to enforce a strict compliance with the terms of its decree.

In the *Ferreira* case (13 How., 40), cited in the opinion of the court, no decree was entered. The court simply forwarded the papers, with its findings therein, to the Secretary of the Treasury for final action. Hence, the court became a mere auditor for an executive officer of the Government. The action of the court could be affirmed or disregarded by the Secretary of the Treasury as he might deem proper. So, in *Hayburn's Case* (2 Dall., 409,) and *Todd's Case* (13 How., 51,) cited by the court in its opinion, the finding of the court there was subject to review and nullification by the Secretary of War, another executive officer. In the case of *In re Sanborn*, 148 U. S., 222, 226, the court said: "Such a finding is not made obligatory on the department to which it is reported—certainly not so in terms—and not so, we think, by necessary implication. We regard the function of the Court of Claims, in such a case, as

ancillary and advisory only. The finding or conclusion reached by that court is not enforceable by any process of execution issuing from the court, nor is it made, by the statute, the final and indisputable basis of action by the department or by Congress." This language will apply with equal force to the other cases cited in the opinion of the court and relied upon to support its conclusions. But that is not this case. Here, so long as the Act stands upon the statute books, there can be no review of a judgment entered under its provisions outside of the judicial department of the Government. It stands as a part of the record of the court, a binding judgment as to the value of the plant and future extensions at the time it was entered, and a limitation upon the powers of the company in increasing its capital stock. As I have observed, it is not only a limitation, but binds the company to the extent that it cannot increase its capital stock in any other way, except by a strict compliance with the terms of the decree. The proceedings are not advisory or ancillary. No further action is necessary by Congress to authorize the issuance of the stock. All that is required is a strict compliance by the company with the decree of the court, and the authority to proceed under the statute is complete.

It is claimed that the Act is defective in that it does not provide any method by which service may be made and a party defendant brought into court. Conceding that Congress could not confer upon the court the power to make a rule that would compel a party to come in and defend, it is perfectly competent for a court to make a rule by which general notice may be given, and under which any party interested may come into court and be heard. Notice by publication was provided for in the rules promulgated in this case, and the right expressly reserved for the stockholders to appear and protect their rights. It is unnecessary for the admission of a party to an action either that the party shall have had notice, or that the court shall have express power to compel such party to appear. The party may appear voluntarily, and, if he appears to have a justiciable interest in the subject of litigation, the court will permit him to be heard. In most civil actions, it is optional with the defendant whether he appears or not. He may elect to permit judgment to run against him by default. The summons or notice is served on a defendant to an action to give the court jurisdiction to enter and enforce its judgment either in favor of or against the person so notified. Here the petitioner is the only one against whom the court can enforce its judgment. There is no defendant who can be judicially affected by the decree. It is, by reason of this, no less a proper judicial proceeding. In many *ex parte* proceedings, the only party affected by the decree entered therein is the petitioner, but usually general notice by publication is given, affording an opportunity for any person interested to appear and assert his rights. The same right of appearance in such a proceeding exists in the absence of notice, especially where the remedy sought runs in favor of or against the petitioner, as in the case at bar, and as is generally true in *ex parte* proceedings. It may

be suggested that the rule in addition to providing for general notice by publication, requires service to be made upon at least one of the Commissioners of the District of Columbia, and upon either the Attorney General or Solicitor General of the United States. In compliance with such service, it was admitted at bar that the Commissioners of the District appeared and defended in the case of the Georgetown Gas Light Company. The same parties are here defending on behalf of the public as it is their duty to do, and as they would doubtless do in proceedings of this kind in the future. Their appearance, however, does not change the *ex parte* action into a proceeding *inter partes*. The decree entered can bind only the company, and that is all that was intended by Congress. It does demonstrate, however, that both Congress and the court, by its rules, have provided fully for the protection of the public interests.

But, it is further suggested that, from the duty imposed upon the court by the Act of Congress, such a case cannot arise as calls for the proper exercise of judicial power. In the case of the Interstate Commerce Commission v. Brimson, 154 U. S., 447, the court, considering the constitutionality of the twelfth section of the Interstate Commerce Act, authorizing Circuit Courts of the United States to use their process in aid of inquiries before the Commission, said: "What is a case or controversy to which, under the Constitution, the judicial power of the United States extends? Referring to the clause of that instrument, which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice Marshall, has said: 'This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws and treaties of the United States.' Osborn v. Bank of the United States, 9 Wheat., 738, 819. And in Murray v. Hoboken Co., 18 How., 272, 284, Mr. Justice Curtis, after observing that Congress cannot withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty, nor, on the other hand, bring under judicial power a matter which, from its nature, is not for judicial determination, said: 'At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' In that case, Congress had created the Interstate Commerce Commission, and delegated certain powers to it for the regulation of public service corporations engaged in inter-

state commerce. Here, Congress is legislating for the regulation of a public service corporation. In both instances "there are matters involving public rights." The matters here presented are "in such form that the judicial power is capable of acting on them," and they "are susceptible of judicial determination." Congress, in bringing this matter within the cognizance of a court of competent jurisdiction, instead of legislating directly upon the subject, certainly acted within the limits of the powers conferred upon it by the Constitution.

Considering the plenary power reposed in Congress by the Constitution (Art. 1, Sec. 8, Cl. 17), to legislate for the government of the District of Columbia, I am of the opinion that the power conferred by the Act in question upon the Supreme Court of the District, is a constitutional delegation of judicial authority.

**Actions.**—A right of action for the refusal of a trust company to fulfil its agreement to loan money is held, in *Holt v. United Security L. Ins. & T. Co.* (N. J. Err. & App.), 11 L. R. A. (N. S.), 100, to arise upon its repudiation of the contract, although the money was to have been advanced when a certain building, which has not been erected, was completed.

**Assignments.**—Where one who, without giving notice of his rights, loans money on a written assignment of a contract for public work, and permits the contractor to retain possession of the contract, complete the work, and obtain time orders for the amount due, which he sells for value to a stranger, it is held, in *Washington v. Wabash Bridge & I. Works* (Mich.), 11 L. R. A. (N. S.), 471, that he will be subordinated to the rights of the latter.

**Attachment.**—A bank which pays out a deposit under garnishment upon a judgment against another person of the same name as the depositor is held, in *O'Neil v. New England Trust Co.* (R. I.), 11 L. R. A. (N. S.), 248, to be liable to the depositor for the amount.

**Bonds.**—The employment of a bank cashier for a period of one year, after appointing him to the office for a period to continue at the pleasure of the trustees, is held, in *Wapello State Sav. Bank v. Colton* (Iowa), 11 L. R. A. (N. S.), 493, to be a new appointment, and to terminate the liability of the sureties on the bond given upon his first appointment.

**Brokers.**—A broker who was privy to wagering contracts for fictitious or option futures, and brought the parties together for the very purpose of entering into such illegal agreements, is held, in *Anderson v. Holbrook* (Ga.), 11 L. R. A. (N. S.), 575, to have no right to recover for advances made by him on account of his principal in forwarding such illegal contracts.

**Death.**—A settlement by the sole heir at law of a claim for damages for the suffering of one killed through another's negligence is held, in *McKeigue v. Chicago & N. W. R. Co.* (Wis.), 11 L. R. A. (N. S.), 148, to be binding upon an administrator of decedent's estate subsequently appointed, who does not need the assets in the administration of the estate, but will distribute any recovery by him to such heir.

**Carriers.**—That street-car conductors are not bound, as matter of law, to ascertain that a passenger who has signaled a desire to leave the car is safely off before starting the car, if they use the highest care with reference to the matter consistent with the transaction of the business, is declared in *Millmore v. Boston Elev. R. Co.* (Mass.), 11 L. R. A. (N. S.), 140.

The right of a railroad company to adopt rules requiring interstate colored passengers to occupy coaches set apart exclusively for the use of colored persons while within the limits of a particular State is sustained in *Chiles v. Chesapeake & O. R. Co.* (Ky.), 11 L. R. A. (N. S.), 288.

The right of a railroad company to contract for exemption from liability for negligent injuries to conductors in charge of the sleeping cars of other corporations attached to its trains is sustained in *Denver & R. G. R. Co. v. Whan* (Colo.), 11 L. R. A. (N. S.), 432.

The right of a railroad company, in contracting for the moving of a circus train over its road, to stipulate for freedom from liability for injury to person or property carried under the contract, no matter how caused, is sustained in *Clough v. Grand Trunk Western R. Co.* (C. C. A. 8th C.), 11 L. R. A. (N. S.), 446.

**Contempt.**—A judge is held, in *Lamberson v. Superior Court* (Cal.), 11 L. R. A. (N. S.), 619, not to be disqualified from sitting in a proceeding to punish a contempt consisting of imputation of his motives and attacks upon his integrity.

**Corporations.**—The payment of dividends by a corporation to its stockholders to such an extent as to render it insolvent after it incurs an indebtedness, although in accordance with a resolution passed prior to that time, is held, in *Montgomery v. Whitehead* (Colo.), 11 L. R. A. (N. S.), 230, to render the stockholders receiving them liable to a creditor of the corporation's creditor, who recovers a judgment in garnishment proceedings against the corporation instituted after such payment, since his rights are held to relate back to the inception of those of his debtor.

One lending money to a bank within the limit which the bank has charter authority to borrow, without knowledge or reason to know of other loans the aggregate of which exceeds the limit, is held, in *Citizens' Bank v. Weakley* (Ky.), 11 L. R. A. (N. S.), 598, not to be affected by the charter limitation.

**Easements.**—The owner of a right of way across another's farm is held, in *Schmidt v. Brown* (Ill.), 11 L. R. A. (N. S.), 457, to have a right to remove gates placed across it by one who purchased the servient estate with notice of the way as it existed on the ground, and of the claims of the dominant owner with respect to it.

**Evidence.**—The presumption of undue influence in case of gifts from a man to his mistress is held, in *Platt v. Elias* (N. Y.), 11 L. R. A. (N. S.), 554, to be one of fact.

That an appellate court will not take judicial notice of the record of an appeal pending before it, in another suit between the parties to the action, in which it is requested to do so, is declared in *Murphy v. Citizens' Bank* (Ark.), 11 L. R. A. (N. S.), 616.

**Damages.**—Damages for mental suffering

caused by failure to deliver an answer announcing the improvement of a sick relative, in response to a message seeking information concerning him, are held, in *Western U. T. Co. v. Hollingsworth* (Ark.), 11 L. R. A. (N. S.), 497, to be recoverable under a statute allowing damages for mental suffering caused by failure to deliver telegrams.

To permit a recovery of more than nominal damages by collateral kindred for the negligent killing of their relative, it is held, in *Rhoads v. Chicago & A. R. Co.* (Ill.), 11 L. R. A. (N. S.), 623, that they must show that they suffered pecuniary loss thereby.

**Electricity.**—To attach an uninsulated wire carrying a dangerous electrical current, to a tree in a highway having branches extending almost to the ground, which children would be likely to climb, is held, in *Temple v. McComb City Elec. L. & P. Co.* (Miss.), 11 L. R. A. (N. S.), 449, to be negligence.

One maintaining an uninsulated electric wire near a bridge pier is held, in *Graves v. Washington Water Power Co.* (Wash.), 11 L. R. A. (N. S.), 452, not to be bound to anticipate that, because of the attractive character of the pier and the birds found there, children may climb the pier and come in contact with the wire, and to take precautions to guard against injury to them.

**Evidence.**—Declarations and admissions of a person since deceased, made ante litem motam, respecting the date of his birth, are held in *Taylor v. Grand Lodge, A. O. U. W.* (Minn.), 11 L. R. A. (N. S.) 92, to be admissible in evidence against his beneficiary, in an action to recover upon a mutual benefit certificate issued to him in his lifetime, in which the defense interposed is that a false date of birth was given in the application for membership, the basis for the insurance.

In a suit by a customer against a bank to recover damages for the wrongful dishonor of his check, evidence relating to the customer's financial credit and standing is held, in *Hilton v. Jesup Banking Co.* (Ga.), 11 L. R. A. (N. S.), 224, to be admissible, although there be no claim for special damages.

**Executors.**—That one executor will not, in an accounting between themselves, be charged for losses caused by the negligent management by his coexecutor of a portion of the estate which was turned over to him to care for, is declared in *Cheever v. Ellis* (Mich.), 11 L. R. A. (N. S.), 296. A note to this case reviews the other authorities on liability of coexecutor for default of one permitted to manage estate.

**Injunction.**—The right to an injunction to restrain interference with one's rights under a contract is sustained in *Beekman v. Marsters* (Mass.), 11 L. R. A. (N. S.), 201, where it is shown that damages will not afford an adequate remedy.

The right to an injunction to restrain the owner of vacant property from permitting it to be used as a playground, merely because persons using it bat balls onto adjoining property and commit trespasses in reclaiming them, is denied in *Spiker v. Eikenberry* (Iowa), 11 L. R. A. (N. S.), 463.

A minority stockholder of a corporation, at whose instance the directors have instituted an action in the name of the corporation against a lessee of its property for an accounting is held, in

**Gray v. South & N. A. R. Co. (Ala.), 11 L. R. A. (N. S.), 581,** to have no right to maintain a suit in another court of coordinate jurisdiction to secure the accounting and to enjoin the prosecution of the former suit, although the directors are unfit to manage and conduct the suit.

**Insurance.**—An insurance company which has paid to a mortgagee the amount of its debt after the destruction of the insured property by fire is held, in *Gillaspie v. Scottish Union & Nat. Ins. Co. (W. Va.), 11 L. R. A. (N. S.), 143,* to be entitled to be subrogated to the rights of the mortgagee in accordance with a stipulation in the policy, where the mortgagor had forfeited his rights thereunder by reason of change of title without notice, and by failure to fulfil any of the requirements of the policy.

An insurance company which, in order to avoid suit, pays the amount of a policy on the life of one who has disappeared, upon demand of those entitled to recover in case of his death, is held, in *New York L. Ins. Co. v. Chittenden (Iowa), 11 L. R. A. (N. S.), 233,* to be bound by its election, and to have no right to demand a return of the amount upon the reappearance of the insured.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**Berry & Minor, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Jane H. Hooff, Deceased.**  
No. 15,028. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by William A. Hooff, it is ordered this 17th day of February, A. D. 1908, that William Hooff, John Lester Hooff, Mary Hooff, Clara Hooff, Bettie Hooff, Ellie Hooff, Mollie Hooff, Frank Hooff, Edward Hooff, and Joseph Hooff, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 88v.

New corporations can procure from the Law Reporter Printing Company, 518 5th Street Northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

### Legal Notices.

**Ivan Heideman, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Eleanora Lippard, Plaintiff, v. William A. Lippard,**  
**Defendant.** At Law, No. 50,123.

The object of this suit is to recover from the defendant the sum of \$1,004, and interest thereon amounting to \$63, said sum being due under a certain agreement entered into between the parties hereto on December 22, 1903, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 20th day of February, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said date. By the Court: **WRIGHT, Justice.** True copy. Test: **J. R. Young, Clerk,** by **F. W. Smith, Asst. Clerk.** 8-4t

**J. A. Maedel, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Christian P. Dieterich,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of February, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of February, 1908. **CHARLES W. LEDERER,** 1107 Sixth St. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,042. Administration. [Seal.] 8-3t

**Geo. Francis Williams, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Vermont, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William A. Wilcox,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **EMMA N. WILCOX,** care of Geo. F. Williams, 900 F St. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,064. Administration. [Seal.] 8-8t

**M. J. Colbert, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Weser,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of February, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of February, 1908. **EDWARD F. CUMMISKEY,** 1842 You St. N. W.; **MICHAEL J. COLBERT,** 412 5th St. N. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,914. Administration. [Seal.] 8-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

**Lambert & McLean, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term for Probate Business.**  
**In re Estate of Christiana C. Queen, Deceased.**  
**Probate No. 15,007.**

Application having been made herein for probate of the last will and testament of said deceased, Christiana C. Queen, and for letters testamentary on the estate of said Christiana C. Queen, by William Gordon Crawford, and citation having been issued against the parties named herein, and having been returned by the marshal of the District of Columbia as not to be found as to each of them, it is ordered this 18th day of February, A. D. 1908, that Mrs. Joshua Tevis, Walter Miller, Pierce Crosby Raborg, Walter Q. Raborg, Annie Crosby Bryant, Benjamin Cratz Crosby, Miriam Gratz Crosby, Pierce Crosby, and Miss Jean A. Crosby, and all others concerned, appear in said court on Friday, the 27th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post, once a week for three successive weeks before the return day herein mentioned, the first publication to be not

[Seal] less than thirty days before said return day.  
**ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of Probate Court. 8-3t

**Howard Boyd, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Daniel J. Heffner and John J. Pillon, Copartners,**  
**trading under the firm name and style of Heffner and Pillon, Plaintiffs, v. J. P. Robinson and W. O. Scully, Copartners, trading under the name and style of Palestine Stables, Defendants.**

At Law, No. 49,987.  
 The object of the suit is to obtain judgment in the sum of twelve hundred and forty-six dollars and sixty-seven cents, and interest, and to subject certain property and credits, attached herein, to the payment thereof. On motion of the plaintiffs, it is this 14th day of February, A. D. 1908, ordered that the defendant, J. P. Robinson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald, by the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 8-3t

[Seal] **Lawrence Hufty, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**Estate of Cara H. Wilson, Deceased.**  
**Administration No. 14,708**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Malcolm Hufty and Theodore D. Wilson, it is ordered this 18th day of February, A. D. 1908, that Arthur Roxby and William H. Roxby, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 8-3t

[Seal] **L. Melendez King, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles C. Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. **W. CALVIN CHASE, 1109 Eye st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,970. Administration. [Seal.]** 8-3t

**Legal Notices.**

**D. W. O'Donoghue and J. R. Fague, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Term.**  
**Louis M. Paxton et al., Complainants, v. John W. Paxton et al., Defendants.** Equity No. 27,376.

**DECREES.**

On consideration of the report of Daniel W. O'Donoghue and Joseph R. Fague, trustees, filed herein, showing that they have sold to Thomas J. Harford, for \$1,600, parts of lots 117 and 118, in square 1240, described as follows: Beginning at the southeast corner of lot 118 and running north on the west line of 28th street 28.60 feet to north line of premises 1344 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 23.60 feet to the south line of lot 117; thence east with the south lines of said lots 117 and 118 the distance of 117 feet to the point of beginning, being improved by premises 1342 and 1344 28th street northwest; and to Charles H. Parker, for \$1,150, parts of lots 117 and 118, in square 1240, described as follows: Beginning on the west line of 28th street at a point 23.60 feet north from the southeast corner of said lot 118, and running thence north with the said west line of the said street 24.04 feet to the north wall of house numbered 1346 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 24.04 feet to a point opposite to the place of beginning, and thence east 117 feet to the place of beginning, being improved by premises 1346 28th street northwest; and to Mary T. Mynsbridge, for \$510, part of lot 122, in square 1239, described as follows: Beginning for the same at the end of 47 feet from the west line of said lot and running thence east with the south line of Beall (now called O street) 29 feet 6 inches, more or less; thence south and parallel with the said west line until it intersects the line of Holmead's addition to Georgetown; thence with the line of said addition to the depth of said lot 120 feet; thence west 2 feet and 6 inches, more or less; thence northerly and parallel with the said Holmead's Addition until it strikes the southwest corner of the back building of the house standing on the lot hereby intended to convey; thence with the dividing partition separating the two houses to the south line of Beall (now O street) to the place of beginning. It is, by the court, this 18th day of February, 1908, adjudged, ordered, and decreed that said sales be, and they are hereby, ratified and confirmed unless cause to the contrary be shown on or before the 19th day of March, 1908. Provided a copy of this order be published in The Law Reporter once a week for three consecutive weeks prior to said last mentioned date. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-3t

[Seal] **L. A. Dent, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Gibbons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of February, 1908. **FRANK A. GIBBONS, CHAS. F. GIBBONS, 3135 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,062. Administration. [Seal.]** 8-3t

[Seal] **Hugh F. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Florine A. Brewer, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 9th day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of February, 1908. **LEWIS H. HINES, by Hugh F. Taggart, Attorney.** Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,997. Administration. [Seal.] 8-3t



**Legal Notices.**

**Emanuel M. Hewlett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Herman L. Livingston, Deceased.**  
 No. 15,002. Administration Docket —

Application having been made herein for letters of administration on said estate, by Margaret B. Albert, it is ordered, this 14th day of February, A. D. 1908, that Ada B. Jones, Eureka B. Matthews, Mary B. Euing, Guy L. McKeal, Christopher Bozeman, Fannie Thompson, Gladys Thompson, Harry A. Thompson, and all others concerned, appear in said court on Tuesday, the 24th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be

[Seal] not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest:

**James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 8-31

**David Rothschild, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joseph A. Kaschka, Deceased.**  
 No. 15,024. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles E. Gerner, it is ordered, this 17th day of February, A. D. 1908, that Ida Hohl, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest:

**James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 8-31

**Thompson & Laskey, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth McKay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of February, 1908. **WILLIAM M. STEWART, 910 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,768. Administration. [Seal.]** 8-31

**H. W. Sohon, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**James P. Healy et al. v. Francis Cunningham et al.**  
 Equity, No. 27,272.

On consideration of the report of James P. Healy and Henry W. Sohon, trustees in this cause, it is on this 17th day of February, 1908, ordered and decreed that the sale reported by them of lot A in block three (3) of Howard University subdivision of Effingham place, as per plat recorded in liber district No. 1, folio 76½ and 77, of the records of the office of the surveyor of the District of Columbia, to George Uricolo for thirty-three hundred and seventy-five (\$375) dollars, be ratified and confirmed unless cause to the contrary be shown on or before the thirtieth day after the date hereof, and that this order be published once a week for three weeks in The Washington Law Reporter previous to said date. **ASHLEY M. GOULD, Justice. A True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.** 8-31

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**Legal Notices.**

**E. H. Thomas and A. B. Duvall, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**  
**In re Widening of an Alley in Square 347, in the District of Columbia. District Court, No. 764.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the widening of an alley in square 347, in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the widening of said alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 14th day of February, A. D. 1908, ordered, that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 9th day of March, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 9th day of March, A. D. 1908; it is further ordered, that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia before the said 9th day of March, A. D. 1908. By the Court: **JOB BARNARD, Justice.**

A true copy. Test: **J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.** 8-16

**SECOND INSERTION.**

**Isaac R. Hitt, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward M. Truell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of February, 1908. **ISADORA L. TRUELL, 1315 Clifton st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,827. Administration. [Seal.]** 7-31

**H. W. Sohon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Denis J. Stafford, Deceased.**  
 No. 15,004. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Helen C. Whitton, it is ordered this 13th day of February, A. D. 1908, that James T. Stafford, J. Raymond Stafford, and John Stafford, and all others concerned, appear in said court on Monday, the 16th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 7-31

[Seal] Justice blanks of every description for sale at this office.

**Legal Notices.**

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adolph Wolschendorf, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. **FREDERICK A. FENNING**, Century Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,885. Admn. [Seal.] 7-3t

**J. C. Mattingly, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of C. Louise Dahler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. **GUSTAV H. DAHLER**, Bladensburg, Md.; **HENRY C. STAHLER**, 285 N. J. ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,892. Administration. [Seal.] 7-3t

**Richard P. Whiteley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of New York City, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of H. Bowyer McDonald, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of September, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. **DONALD McDONALD**, Admr., care of R. F. Shepard, 819 17th st. N. W., Washn., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,322. Administration. [Seal.] 7-3t

**Jos. H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William E. Outlaw, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. **LIZZIE OUTLAW**, 1787 11th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,900. Administration. [Seal.] 7-3t

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cecilia Howard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of February, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by Thomas R. Jones, President; **GEORGE HOWARD**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,937. Admn. [Seal.] 7-3t

**Legal Notices.**

**Birney & Woodard, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**William H. Spelshouse, Complainant, v. The Unknown Heirs and Devises of Henry Bradford et al.**  
 No. 27,558. Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession lot three (3) in square 660, in the city of Washington, D. C. On motion of the complainant, it is, this 10th day of February, 1908, ordered that the defendants, **J. F. Hilton** and **William M. Harper**, cause their appearance to be entered on or before the fortieth day exclusive of Sundays and legal holidays occurring after the date of the first publication of this order, and that the defendants, the unknown heirs and devisees of **Henry Bradford**, deceased, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of the order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in *The Washington Law Reporter* and *The Washington [Seal] Times*. By the Court: **HARRY M. CLAUBAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. A. C. Palmer**, Asst. Clerk. 7-3t

**E. Hilton Jackson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscribers, of the District of Columbia, and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frederick Stutz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of February, 1908. **JOHN A. STUTZ**, 1645 18th st., Wash., D. C.; **GEORGE F. STUTZ**, 476 State st., Albany, N. Y. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,132. Administration. [Seal.] 7-3t

**F. H. Stephenson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frederick Webber**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of February, 1908. **AUSTIN B. CHAMBERLIN**, 433 8d st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,065. Admn. [Seal.] 7-3t

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**This is to Give Notice** That the subscriber, which was, by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Samuel Beckley Holabird**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 3d day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of February, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by **Wm. D. Hoover**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,228. Administration. [Seal.] 7-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

Woodbury Blair, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Morton Mitchell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ELIZABETH PATTERSON MITCHELL, care of Woodbury Blair, Corcoran Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,036. Administration. [Seal.] 7-3t

Darr & Peyser, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine McCarthy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. RICHARD A. CURTIN, 706 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,001. Administration. [Seal.] 7-3t

H. Winship Wheatley, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna J. Seymour, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. ELIZA OTTO SEYMOUR, 1820 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,033. Administration. [Seal.] 7-3t

Michael J. Keane, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. MARY LANGLEY, 100 2d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,911. Administration. [Seal.] 7-3t

W. B. Reilly, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Elizabeth Hecht, Complainant, v. Victor Hecht, Defendant. Equity No. 27,581.

The object of this suit is to obtain a divorce from the bond of marriage with the defendant, Victor Hecht, on the grounds of adultery. On motion of the complainant, by William B. Reilly, her solicitor, it is, this 4th day of February, A. D. 1908, ordered that the defendant, Victor Hecht, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order of publication be published once a week for three successive weeks in The Washington Law

[Seal] Reporter and The Washington Herald.  
HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 7-3t

**Legal Notices.**

Wolf & Cohen, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of Washington, D. C., has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharina Margaretta Amberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. JOHN C. AMBERGER, by Wolf & Cohen, Attorneys, 700-706 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,014. Administration. [Seal.] 7-3t

James A. Toomey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
In re Estate of Margaret Donohoe, Deceased.  
No. 14,448. Administration.

Upon consideration of the report of James J. O'Connor, executor, filed herein on February 8th, 1908, reporting the sale of part of lot six (6), in square number 51, to Margaret W. Hoeler for the sum of two thousand nine hundred dollars (\$2,900.00), net, it is, this 18th day of February, A. D. 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before March 14th, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day [Seal] in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 7-3t

**THIRD INSERTION.**

James H. Taylor, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine Ruppert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. JAMES H. TAYLOR, 1419 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,809. Administration. [Seal.] 6-3t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel W. Stinemetz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of January, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,972. Administration. [Seal.] 6-3t

Wm. M. Offey, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of New Jersey, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert I. King, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. MARY M. PATON, care of Wm. M. Offey, 317 4 1/2 st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,012. Admn. [Seal.] 6-3t

**Legal Notices.**

**Lambert & McLean, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Petronilla M. Fenwick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of January, 1908. RUDOLPH H. YEATMAN, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,686. Administration. [Seal.] 6-3t

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lizzie Dewey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st of January, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by George Howard, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,943. Administration. [Seal.] 6-3t

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Fogarty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of February, 1908. JOHANNA FOGARTY, 2112 16th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,964. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Randall B. Corbin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ELLA A. BASSFORD, 414 10th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,984. Administration. [Seal.] 6-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Margaret A. Simon, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of February, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of February, 1908. HENRY W. SOHON, 844 Dst. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,112 Administration. [Seal.] 6-3t

**Legal Notices.**

**William C. Prentiss, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas F. Stephenson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of January, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of February, 1908. JANIE S. STEPHENSON, 2016 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,106. Admn. [Seal.] 6-3t

**A. E. Rowell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the State of Maryland and of the State of Virginia, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alfred W. Rowell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. AMBROSE ROWELL, West Falls Church, Va.; ELIAS ROWELL, Hyattsville, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,986. Administration. [Seal.] 6-3t

**Irwin B. Linton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alpheus Middleton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. FRANK D. MIDDLETON, care of Barber & Ross, 11th and G sts. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,027. Administration. [Seal.] 6-3t

**Barnard & Johnson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Kohler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. ROSA E. FAULKNER, 280 W st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,006. Administration [Seal.] 6-3t

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary J. Kennedy, Deceased.**  
**No. 14,990 Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Darr, it is ordered this 3d day of February, A. D. 1908, that William Kennedy, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 6-3t

**Legal Notices.**

**Lyon & Lyon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of David Roberts, Deceased.**  
 No. 14,941. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Charles F. Parker, it is ordered this 5th day of February, A. D. 1908, that Henry Walker and the unknown heirs at law and next of kin of David Roberts, deceased, and all others concerned, appear in said court on Monday, the 9th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD,** Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 6-3t

**Ralston & Siddons, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**American Security and Trust Company v. Eben Grant Townsend et al.** No. 27,548. Equity Doc. 61.

**ORDER OF PUBLICATION.**

The object of this suit is to distribute, under the order of the court, certain trust funds and securities amounting in the aggregate to about four thousand (4,000) dollars, held by the complainant as trustee under an agreement in trust between the defendants, Eben Grant and Eddy B. Townsend, as set forth in the bill of complaint filed herein. On motion of the complainant, it is, this 5th day of February, A. D. 1908, ordered, that the defendant, Eben Grant Townsend, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order shall be published, at least once a week for three successive weeks

[Seal] in The Washington Law Reporter and The London Times. (Signed) **HARRY M. CLABAUGH,** Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 6-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah S. Sampson, Deceased.**  
 No. 14,969.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary C. Smith, it is ordered this 5th day of February, A. D. 1908, that William B. Smith, Edwin B. Smith, Charles W. D. Smith, Lewis E. Smith, Clara S. Bosworth, Harold Smith, William Smith, Frank Smith, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD,** Justice. A true copy. Attest: James Tanner, Register of Wills. 6-3t

**Gordon & Gordon, Erskine Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Agnes Kayser v. Agnes M. Albrecht.**  
 Equity No. 27,488.

The object of this suit is to sell for partition the property of which Elizabeth Christina Jacobi died seized, namely, part of lots 169 and 171 in Beatty and Hawkins' addition to Georgetown in square 1254, lot 2 in George W. Riggs' subdivision of original lots 161, 162, and 163. In Beall's addition to Georgetown in square 1211, and part of lot 40 in Peter, Beatty, Threlkeld and Deakins' addition to Georgetown in square 1211, all in the city of Washington, in the District of Columbia. On motion of the complainant, it is this 5th day of February, A. D. 1908, ordered that the defendants, Evelina Meyers and Mary Nirod, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law

[Seal] Reporter and The Evening Star. **ASHLEY M. GOULD,** Justice. True copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. 6-3t

**Legal Notices.**

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John Chandler Bancroft Davis, Deceased.**  
 No. 14,993.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frederica Gore Davis, it is ordered, this 5th day of February, A. D. 1908, that Horace Davis, Andrew McFarland Davis, Girardi Davis, Hasbrouck Davis, Chandler Davis, Eliza Bancroft Davis, Louise Bancroft Davis, John Chandler Bancroft Davis, Bancroft C. Davis, Arthur Edward Davis, Edwin Loring Sprague, Jr., Ruth Davis Sprague, Henry Bancroft Sprague, infant, Richard Warren Sprague, infant, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD,** Justice. A true copy. Attest: James Tanner, Register of Wills. 6-3t

[Filed February 6, 1908. J. R. Young, Clerk.]  
 C. C. James, Solicitor

**In the Supreme Court of the District of Columbia.**  
**John M. Herfurth et al., Complainants, v. Unknown Heirs, devisees, and Allenees of Benjamin Stoddert, John Rochford, Henry Burford, Defendants.**  
 Equity No. 27,575.

The object of this suit is to declare the title to part of lot nine (9), in square five hundred and thirty-eight (538), beginning for the same at a point on south F street twelve (12) feet and six (6) inches from the east line of said lot nine (9) in said square; thence running west twelve (12) feet and six (6) inches; thence north seventy-nine (79) feet and six (6) inches to an alley; thence east twelve (12) feet and six (6) inches; thence south seventy-nine (79) feet six (6) inches to the place of beginning, in the city of Washington, District of Columbia, to be good in fee simple in the complainants by reason of adverse possession thereof for more than twenty-two years. On motion of the complainants, by C. Clinton James, their solicitor, it is, by the court, this 6th day of February, A. D. 1908, ordered that the defendants, the unknown heirs, allenees, and devisees of Benjamin Stoddert, of John Rochford, and of Henry Burford cause their appearances to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the case will be proceeded with as in case of default. A copy of this order shall be published once a week for four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

By the Court: **ASHLEY M. GOULD,** Justice.  
 A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-4t

**Hargrove & Morris, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Carroll D. Wright and John Bruce McPherson, Executors and Trustees, Complainants, v. Charles Wallace Stilwell et al., Defendants.**  
 No. 27,580. Equity Docket No.—

The object of this suit is to obtain a decree construing the will and codicil of Anna M. Colman, formerly of the District of Columbia, deceased, and directing the executors how to distribute the estate of said deceased. On motion of the complainants, it is this 6th day of February, A. D. 1908, ordered that the defendants, Charles Wallace Stilwell, William Wallace Stilwell, Caroline E. Wright, Isabella Wilbur Pyfer, Carrie Loomis Schober, and all persons having or claiming to have any interest in said estate, or any claims or demands under said will and codicil as legatees, devisees, heirs, or representatives, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: **HARRY M. CLABAUGH,** Chief Justice.  
 True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-3t

**Legal Notices.**

Nelson Wilson, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.  
In re Estate of Richard Henry Lansdale, Deceased.  
Administration, No. 14,881.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Mary Stokes Lansdale, it is ordered this 31st day of January, A. D. 1908, that Clayton V. Sayre, Ella Hargrove Sayre, E. Leola Baxeres, Lola M. Hobbs, George Harold Hobbs, George W. Huddleson, Harry Wright Huddleson, and all others concerned, appear in said court on Tuesday, the 10th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. A true copy.  
Attest: James Tanner, Register of Wills. 6-3t

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna S. Mallett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. FRANK B. KING, 1442 R. I. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,901. Administration. [Seal.] 6-3t

Irving Williamson, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Macdaniel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. NORRIS MACDANIEL, 409 15th st., City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,021. Administration. [Seal.] 6-3t

Coldren &amp; Fenning, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of John W. Crawford, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. GEO. S. WILSON, Oak Grove, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,018. Admn. [Seal.] 6-3t

George F. Havell, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry W. Reid, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of February, 1908. GEORGE F. HAVELL, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,000. Administration. [Seal.] 6-3t

**Legal Notices.**

[Filed February 4, 1908. J. R. Young, Clerk.]

R. Ross Perry &amp; Son, Solicitors

In the Supreme Court of the District of Columbia.  
In re Dissolution of The Columbia Fire Insurance  
Company of the District of Columbia.  
No. 27,500. Equity.

It appearing to the court that application has been made to the court in the above entitled cause for a voluntary dissolution of the body corporate, The Columbia Fire Insurance Company of the District of Columbia, and it appearing to the court that such application, together with the accompanying accounts, inventories, and affidavit required by law have been filed in this court, it is accordingly upon motion of Messrs. R. Ross Perry & Son, attorneys for the petitioner, this 4th day of February, 1908, ordered that all persons interested in the said corporation, The Columbia Fire Insurance Company of the District of Columbia, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 10th day of March, 1908, why the said body corporate should not be dissolved; further it is ordered that a notice of this order shall be published in The Washington Post and The Evening Star, papers of general circulation of the said District, and also in The Washington Law Reporter, weekly for three successive weeks, the first insertion to be not less than

[Seal] one month before the said 10th day of March, 1908, being the day fixed for showing cause as aforesaid. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 6-3t

**SIXTH INSERTION.**

Alex. Muncaster, Gittings & Chamberlain, Solicitors  
In the Supreme Court of the District of Columbia.  
Andrew W. Kirk et al., Complainants, v. Alice C. De  
Vaughn et al., Defendants. Equity, No. 27,428.

The object of this suit is to partition the following described property according to the respective interests of the parties hereto and for a receiver and accounting, viz: All that portion of lot 21, square 878, beginning at the northeast corner of said lot; thence south along the west line of 9th street 19 feet 8 inches; thence west 68 feet 4.5 inches; thence north 19 feet 6 inches; thence east along the south line of E street to place of beginning. All those parts of lots 20 and 22, square 378, beginning at northeast corner of lot 22; thence south along the west line of 9th street 25.54 feet; thence west 110 feet; thence north 25.54 feet; thence east to beginning. All of lots 1 and 2, square 483. On motion of the complainants it is this 6th day of December, 1907, ordered that the defendants, Alice C. De Vaughn, Iola P. Spaulding, Frank De Vaughn Phillips, Ernest S. Bartlett, John H. De Vaughn, and the unknown heirs, allenees, and devisees of William F. De Vaughn, Jr., and Jane Davis, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during said three months in The Washington Law Reporter and The Washington Post. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk.

dec 13-20; Jan 10-17; Feb 14-21

**SEVENTH INSERTION.**

Phillip Walker, Solicitor

In the Supreme Court of the District of Columbia.  
Horace K. Fulton v. The Unknown Heirs, Devisees,  
and Allenees of Henry Burford and William  
O'Neale. In Equity, No. 27,448.

The object of this suit is to establish title in the complainant by adverse possession of lot 144 in Mary S. Milliken's subdivision of lot 49 in commissioners subdivision of original lot 17, in square 510, in the City of Washington, District of Columbia. On motion of the complainant it is, this 11th day of December, 1907, ordered that the defendants, the unknown heirs, devisees and allenees of Henry Burford and William O'Neale, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in The Washington Law Reporter and the Washington Post. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

dec 13, 20, 27; Jan 17, 24; Feb 14, 21.



# The Washington Law Reporter

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WASHINGTON, D. C. - - - FEBRUARY 28, 1908

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### Death by Wrongful Act—Validity of State Statute Restricting Provisions to Citizens of State.

The recent decision of the Supreme Court of the United States, in the case of *Chambers v. Baltimore and Ohio Railroad Company*, has met with much unfavorable comment. In that case it was held that the privileges and immunities of citizens in the several States secured by the Federal Constitution to the citizens of each State are not denied by the provision of a statute of Ohio under which, as construed by the highest court of that State, the right of action created by Pennsylvania act of April 15, 1851, p. 674, sec. 19, in favor of the widow or personal representative of one whose death is caused by negligence, can be maintained in the Ohio courts only where the deceased was a citizen of Ohio. Mr. Justice Harlan expressed his dissent from the decision of the majority of the court in a strong opinion, in which Justices White and McKenna concurred.

### Corporations—Promoters—Secret Profits.

An interesting decision was rendered recently by Mr. Justice Gould, holding the equity court, in the case of the *Las Ovas Company v. Davis et al.* The suit was by a corporation against certain of its promoters to recover alleged secret profits made by them. It appeared that the defendants had an option to purchase lands in Cuba for \$20,000, and thereafter, in cooperation with other persons, organized the plaintiff corporation to purchase the same property for the sum of \$35,000, the fact that they had an option for its purchase for \$20,000 not being dis-

closed. A written agreement entered into with those whom they had secured as their associates in the corporation made it appear that the purchase price was \$35,000, and that the only profit of the promoters was 40 per cent of the capital stock of \$150,000 which they divided with their associates. Mr. Justice Gould, in an interesting opinion, holds that the promoters of a corporation stand in a fiduciary relation to it, and are bound to make a full and fair disclosure of their interest in the property sought to be transferred to the corporation. He therefore decreed that the defendants should account for the proportion of the secret cash profit received by them, such profit being the difference between the price paid by them for the property and the price at which they transferred it to the corporation, less any amounts necessarily paid out in securing the land or in forming the corporation, and that such secret cash profits, in so far as they went into the stock of the corporation, might be followed by the plaintiff, or it might have a money judgment therefor. The opinion will be reported in our next issue.

### Specific Performance—Mutuality of Right to Enforce Contract an Essential Condition.

In *Wadick v. Mace et al.*, decided January 21, 1908, by the Court of Appeals of New York, and reported in the *New York Law Journal*, it is held that to entitle either party executing a contract for the sale of real estate to a decree for specific performance, the right to enforce it must be mutual. Where, as in the case before the court, the contract provides that a failure to perform on the part of the grantee should result in his forfeiting the deposit money as liquidated damages and that no action for specific performance should be maintained against him, an action by him for specific performance can not be maintained against the grantor on his failure to perform. Nor can a contract for the sale of real estate be enforced by a decree for specific performance when the uncontradicted evidence leaves no doubt that the minds of the parties never met in respect to the location and boundaries of the property to be conveyed.

### Landlord and Tenant—Breach of Covenant to Repair.

In *Appleton v. Mark*, recently decided by the Court of Appeals of New York, it is held that in an action by a landlord against a tenant for breach by the latter of a covenant to repair, brought after the expiration of the term, the measure of damages is the expense of putting the premises in repair. In such case, the recovery is not affected by repairs made subsequently to the defendant's term by a new tenant.



## Court of Appeals of the District of Columbia.

EDWARD F. MORGAN ET AL., APPELLANTS,

v.

MARIE L. MORGAN ET AL.

WILL CONTESTS; TESTAMENTARY CAPACITY; UNREASONABLE PROVISIONS OF WILL; INSANE DELUSIONS.

1. In a will contest, where there is no evidence tending to support the charge of fraud or undue influence in respect of the execution of the will, a verdict for the caveators on those issues should be directed by the trial court.
2. Assuming that, in a will contest, where the question of testamentary capacity is involved, the jury, in determining that question, may consider what might ordinarily be regarded as an unreasonable provision in a will, as a circumstance in connection with other matters in evidence tending to show a want of testamentary capacity, the instructions granted the caveators in this case and the charge of the trial court held to exceed any admissible application of the principle, and to require a reversal of the judgment.
3. A so-called unnatural and unjust disposition of a testator's estate by a will that in its terms and recitals betrays no other indication whatever of a disordered mind or defective memory can not be submitted to the jury as a circumstance indicative of the want of necessary testamentary capacity.
4. Where, however, there is other evidence, tending to show that testator labored under an insane delusion at the time of making the will, with respect to a certain person or thing, and the distribution made of the estate is in accordance therewith, such provision may become a circumstance to be considered in connection with the extrinsic evidence tending to show the existence of such insane delusion.
5. The mere fact that one disclaims the paternity of children born of his marriage, and disinherits them for that reason, carries no presumption of insane delusion.
6. Held, therefore, in the present case, where it appeared that three children had been born of testator's marriage to a woman from whom he subsequently obtained a divorce on the ground of her adultery, that evidence of belief on his part that he was not the father of the children, was not evidence of an insane delusion, and the charge of the trial court in that regard held erroneous.

No. 1798. Decided February 11, 1908.

APPEAL by caveatees from a judgment of the Supreme Court of the District of Columbia, holding a Probate Court, refusing probate of an alleged will. Reversed.

Mr. ANDREW WILSON, Mr. NOEL W. BARKSDALE and Mr. M. J. COLBERT for the appellants.

Mr. HENRY E. DAVIS and Mr. J. K. M. NORTON for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order denying the probate of the will of Charles R. Morgan, who died in the District of Columbia, October 24, 1905. The will was executed and attested by the requisite number of subscribing witnesses on February 23, 1905. The entire estate of the testator, valued at from \$6,000 to \$7,000, was substantially devised to his two brothers, John R. and Edward F. Morgan, and his sister, Agnes V. Hoppe, for life, with remainder, under certain conditions unimportant to state, to their children or the children of the survivor of them. The fourth item reads as follows: "I make this will with the full knowledge that I am depriving my two children, Marie Morgan and Harry Morgan, of any share in my estate, but I do so because I do not want them to have

one dollar of my property." Noel W. Barksdale was nominated executor.

It appears from the undisputed testimony that the testator had married Fannie E. — in 1890, and that three children had been born between that time and testator's death—Marie in 1892, Harry in 1898, and Malcolm F. in 1902. Testator and wife separated in October, 1902. He sued her for divorce, apparently in that year, charging adultery committed by her with one Mackinard, whom she married after decree. It appears from a part of the decree in that case (that was read by the court to the jury, although, by some inadvertence, it is not recorded as having been offered in evidence), that the charge of the complainant had been sustained and the bonds of matrimony dissolved, shortly before the execution of the will. This decree awarded the custody of the three children aforesaid to the mother and required the testator to pay \$30 per month towards their support.

The executor filed a petition for probate of the will, November 6, 1905. After notice in regular form, a caveat was filed by Winfield S. Lerner, who had been appointed guardian of the said infant children, on December 6, 1905. Thereupon four issues were framed for trial by jury: 1. Whether the will had been executed and attested in due form. 2. Whether, at the time of execution, the testator was of sound and disposing mind and capable of executing a valid deed or contract. 3. Was the execution procured by the fraud of Edward F. Morgan, Alice V. Hoppe, or any other person? 4. Was the execution procured through the undue influence of Edward F. Morgan, Alice V. Hoppe, or any other person?

The verdict was "yes" on the first issue; "no" on the second and third, and "yes" on the fourth.

As to the first issue formal proof was made and the caveators conceded its sufficiency.

Caveators introduced evidence on the issue of testamentary capacity. By this it was shown that the testator had been taken to the Government Hospital for the Insane on September 8, 1888, suffering from a form of mania in which there is intense excitement, amounting almost to delirium—acute mania. He was discharged December 3, 1888, as recovered, and had never been readmitted. This was undisputed. Medical testimony tended to show that in this form of mental disease there is a tendency to recurrence, especially if there is an hereditary element in the case. At the hospital, the mania was ascribed to heat and overwork—heat exhaustion. The medical witness had seen testator a number of times after his discharge, but saw no manifestation of mania. Saw him last several years before the date of testifying, and seemed then to be in a relatively normal state of mind though a little worried about his wife's health. The testimony of a niece of testator's mother tended to show that the latter had been in an asylum for the insane in 1867, and again in 1868, and had been finally discharged as recovered in December, 1868. She had given birth to a child after return and had no violent attack thereafter, though acting queerly. Several witnesses testified to the excited appearance and manner of testator at frequent periods, particularly during the troubles with his wife, and the proceedings for divorce. Sometimes praised, and at others abused his wife. Said he was fond of his children. After divorce appeared like a sick

man; was often worried; sometimes bright, sometimes sad, and sometimes excited. One witness heard him blaspheme the Virgin Mary. He seemed "off on religion." This was from two years to eighteen months prior to his death. Seemed to talk in a rational way afterwards. On the conclusion of this evidence, the caveatees moved an instruction to the jury to return a verdict in their favor on the issues of fraud and undue influence, which was denied, with exceptions reserved.

The caveatees then introduced about forty witnesses, whose testimony tended to show that from their observation of testator's manner and conduct before and after the execution of the will he was sane. Among these were the subscribing witnesses to the will, physicians who had treated the testator, and lawyers who had represented as well as opposed him in his litigation. The testimony tended to show that he had been a witness in the divorce suit, and had borne well the strain of a long and severe cross-examination. It also tended to show that for several years testator had been engaged as a wholesale dealer in mint and horseradish, which continued until his last illness, and that in the course of it he had some transactions involving considerable sums. Some of these witnesses testified concerning testator's opinion as to the parentage of the three children. This tended to show that he had frequently denied parentage of the last child, but had recognized the others until shortly before his will was made. About the time of the decree of divorce he told one of his counsel that he did not believe the two elder children were his, and said he had evidence thereof. Another lawyer testified to intimacy with the testator for years, and said that he had met him on March 4, 1905, and was told the provisions of his will, leaving his property to his brothers and sister and disinheriting the children. Witness expressed his opinion that this was harsh and asked the reason. He said he had learned and was positive that the last child was not his; that he had believed the others were, but since the divorce, men in his employ had told him things they had seen before. On cross-examination he said testator told him that a boy in his employ had told him of other men having had illicit relations with his wife, and that two other men, not members of his family, had told him the same things. Said that before the divorce proceedings ended he was firmly impressed that the last child was not his, and that since the divorce what these men have told him had made him believe that none of the children was his. He told witness what the men had seen, but this was not reported by the witness.

Upon the conclusion of the evidence the caveatees renewed their motion to direct a verdict on the issues of fraud and undue influence, and were again denied. All four issues were then submitted to the jury, resulting in the verdict heretofore stated.

1. We find no evidence in the record tending to support the charges either of fraud or undue influence exercised by any one in procuring the draft and execution of the will. Whether or not the testator was insane at the time of making the will, or laboring under an insane delusion as regards the paternity of his children, there is no evidence, either direct or circumstantial, from which it could be inferred that he was the victim of

fraud or undue influence. The jury should, therefore, have been instructed, as requested by the caveatees, to return a verdict in their favor on each of those issues. Instead of granting the motion the court, though intimating some doubt as to the existence of sufficient evidence to warrant it, submitted both issues to the jury upon all the evidence. He also gave a special instruction in behalf of the caveators relating to the issue of undue influence, and the jury, as we have seen, found for them thereon.

2. Many of the other errors that have been assigned and discussed are subject to the objection made by the appellees, that they lack the precision of specification in the exceptions on which they are founded, that is required by the rules of this court defining the practice in such cases. Without intending, therefore, to be understood as passing any assignment by as immaterial, we shall confine our consideration to such of the errors as we think are not within the objection.

3. The first relates to the special instructions, and the general charge given the jury in respect of the effect that might be given to the unreasonableness and injustice of the provisions of the will.

At the request of the caveators the court gave the following special instructions:

"In order to find the testator, Charles R. Morgan, at the time of making the will in controversy, not to have been possessed of the sound and disposing mind contemplated and required by the law in making such an instrument, it is not necessary that you should find him to have been either actually crazy or of unsound mind, as that expression is ordinarily apprehended or understood. If you find that that said testator, at the time in question, was *mentally* incapable of making a disposition of his property with judgment and understanding with reference to the amount and situation thereof and the relative claims of those who should have been the objects of his bounty, you may find that he did not possess the testamentary capacity requisite in the making of a will and may, accordingly, answer the second issue 'no;' and, in considering this question of testamentary capacity, you should take into account the time, manner, and circumstances of the execution of the will; the nature and extent of the testator's estate; his family and connections, their condition and relative situation to him; the terms upon which he stood with them; the claims of the caveators, or any of them, upon him; the condition and relative situation of the beneficiaries of the will; the contents of the instrument itself, and the unnatural character thereof as respects the caveators, or any of them."

"It is essential to the exercise of the power to make a will that the testator be able to comprehend and appreciate his relations to others who might or ought to be the objects of his bounty; and that no disorder of the mind shall so far poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties as to render him incapable of such comprehension and appreciation, and to bring about a disposal of his property, which, if his mind had been sound, would not have been made."

(3) "In determining the question of a testator's capacity the jury are at liberty to consider in connection with all the other evidence in the case,

the character of the will itself, the beneficiaries thereunder, and those who ordinarily and usually would have been the objects of his bounty; the jury being instructed that the question of capacity always relates to the capacity of the testator to make the particular will in controversy."

(4) "The jury may consider the nature and character of the will, and, if it be contrary to natural justice, this, with all the other facts of the case, may be considered by the jury in the determination of the question whether the testator was of sound mind."

(5) "In determining the question of the testator's capacity, the jury may consider whether or not the claims of the children have been disregarded, and if they find that such claims have been disregarded, they may consider that fact, in connection with all the other facts and circumstances of the case, and give it such weight as, in their sound judgment and discretion, they think it entitled to."

Having referred briefly to the issues of fraud and undue influence, the court then charged the jury as follows:

"But I apprehend you will find the most difficult question to determine under the second issue, as to whether or not this man was of that competency at the time the paper was signed that the law requires of a man to make the character of will that this will is. The law is clear that a man has the right, has the dominion over his property so long as he is in his right sense and of competent age, and can make a will and dispose of his property to whomsoever he pleases. But at the same time, if he makes a will that is unnatural, a will that seems strange, that is one piece of evidence in the case that a jury may consider as to whether or not his mind was right at the time he executed the paper; and that is one of the strong elements in this case that you will have to meet in determining whether or not this was actually the will of a sound mind."

"One word in regard to the position here: It is the law of this land, and it is the law of this District that a father must support his own minor children. It is not only the law, but it was determined in this case by judicial decree in the divorce case that he should pay to the mother of these children thirty dollars a month, until further order of the court, for the support of these three children—not the two, but the three of them. They are all his children legitimately—that is, legally, I mean. It is claimed that they are not actually his, that one of them was not actually his; but there is no pretense here, there is no evidence here to show, that the other two were not actually his children. But the law recognized all three of them as his children, and the decree that the court of equity pronounced in this case required him to pay thirty dollars a month."

After reading from this decree so much as showed the award of the children to the custody of the divorced wife, and the direction that complainant shall pay thirty dollars per month for this support, the court proceeded to say:

"The law required him to support those minor children; the decree of the court required him to support them, all three of them; and he did support them—that is, he complied with the decree—while he was living."

"Now, I do not know of any law that would prevent him from changing his property by con-

veyance, selling it, conveying it, even while that decree was pending; but he still had the moral obligation upon him, as well as the legal obligation, under that decree, to support those minor children. He might have conveyed all of his property away; he might have sold it; he might have changed it; but he would still have that obligation on him. So he might have disposed of his property by will. He had the right to do it, even in disregard of this moral obligation, and this obligation that is generally the offspring of affection from a parent toward his children. He had a right to dispose of his property and disregard that entirely, providing he was of sound and disposing mind, such as the law contemplates in such cases. So that I say that you have this predicament of this family, this condition of affairs to consider and to bear in mind, in considering the question which is most important in the case, as to what this man's mental condition was on the 23d day of February, 1905, when he signed this will."

"It is said in the testimony that this man regarded all his obligations; that he was a church-going man; that he paid his debts; that he recognized his duties as a citizen, was the treasurer of a citizens' association, and all that. Now, did he regard, at the time he made this will, the moral obligations, the obligations of a father towards minor children? This is the query that comes to the minds of all of us in considering the question of testamentary capacity. At that time did he regard those things, or was he in such a state of mind that he had quit being a good practical Catholic, as has been testified to, or that he had given up his ideas of citizenship and proper duties; or was his mind diseased by some defect, something that would unbalance his intellect and throw him off so that he lost his judgment and lost his reason when he was undertaking to dispose of his property and remember those who were or ought to be the objects of his bounty?"

"The title, of course, to real estate goes by conveyance, or it goes by descent. A man makes a deed, and he is said to have disposed of his property by conveyance. So, when he makes a will, his property is said to be disposed of by conveyance; but the difference is that the will does not take effect until the man is dead. If there is no will instantly when the man ceases to live, title descends to his next of kin, his heirs—in this case these three children. So that, if there was no will, on the expiration of the life of Charles R. Morgan, these three children would have taken the title to that property. His wife no longer was entitled to any of it, because she was divorced. The title would have vested in these three children; and if the conveyance is by will, it takes effect at that same date, the death of testator."

"The testimony—that is, some of the testimony—also tends to show that the man's mind was profane toward the objects of his worship heretofore. There is another indication for you to consider in considering all this testimony as to whether that was actually so or not, and if so, whether that did have any effect upon his judgment and capacity to decide fairly and reasonably about his property, and about those who were to have it after he had ceased to live."

Assuming that in every case where the issue of testamentary capacity is involved, the jury, in determining the question, may be permitted to

consider what might ordinarily be regarded an unjust and unreasonable provision of a will, as a circumstance in connection with other facts and circumstances in evidence tending to show a want of testamentary capacity at the time of its execution, we think that the foregoing instructions and charge far exceeded any admissible application of the principle, and could not have failed to exercise too great an influence upon the jury. *Barbour v. Moore*, 4 App. D. C., 535, 549: 22 Wash. Law Rep., 792.

The issues in that case, where the will gave a considerable estate to one child and disinherited another and unfortunate one, were testamentary capacity, fraud, and undue influence, with testimony tending to support each. The judgment setting aside the will was reversed among other grounds on account of the following part of an otherwise unobjectionable charge to the jury.

"Upon these questions you are to take into consideration, as an important element either for or against the will, the contents of the will itself, the character of its provisions, the objects of the testator's bounty, and the reasonableness of the provisions or promises the will makes. You are also to take into consideration all the circumstances that have been advanced in evidence by the number of witnesses that have been examined in your presence."

In passing upon the exception, Mr. Chief Justice Alvey, who delivered the opinion of the court, said:

"This fact of the contents of the will, we think, was put to the jury too broadly, and without sufficient qualification. The jury may have supposed, and most likely did suppose, that they were at liberty, under the instruction, to pass upon the question of the reasonableness of the will, and because they thought the will unreasonable, they were therefore justified in finding against its validity. To allow juries this power of condemning a will because its provisions may not accord with their ideas of what is right and reasonable, would, at once, greatly impair, in a most serious way, the invaluable right of a citizen in making a will. Many wills are deemed unreasonable, but it can never be tolerated that they should for that cause alone be nullified by the verdicts of juries."

4. As there must be another trial of the case, it becomes important to consider under what conditions the apparent unreasonableness and inequality of a will may be submitted to the jury as a circumstance in connection with other evidence tending to show incapacity, fraud, or undue influence.

A great number of decisions by the courts of the various States might be cited in support of the general proposition that such unreasonableness is a circumstance to be considered by the jury, but the reports of these rarely set out in words the provisions of the wills in which this unreasonableness is manifested. In one that seems to go the greatest length in that direction it was said in the opinion: "The common sense of mankind condemns as contrary to natural justice a will which practically disinherits such children and leaves the bulk of a large fortune to those who have done no more than they to deserve it, and are better able to meet the vicissitudes of life, and courts and juries have the right to take that fact into consideration in determining the competency of the testator to make the will."

*Rivard v. Rivard*, 109 Mich., 90, 118. If the will in that case was unreasonable only in that it made an unequal and apparently unjust division of the estate between the testator's children, the doctrine enounced is in conflict with that of *Barbour v. Moore*, supra. The question seems never to have been passed on by the Supreme Court of the United States. It is true that it was said in *Barbour v. Moore*, that in an otherwise doubtful case the provisions of the will might furnish intrinsic evidence involving it in suspicion, and tending to show incapacity; and hence, if apparently unnatural and not consonant with parental affection, would doubtless excite suspicion against it; but is then only a circumstance to be considered with other facts and circumstances. These expressions are substantially taken from the opinion in the case cited in their support, namely, *Davis v. Calvert*, 5 Gill & John, 269, 301. In that case, the will was vigorously attacked on the ground of fraud and undue influence, as well as mental unsoundness; and the court went on to say that according to the degree of injustice, absurdity, and unreasonableness of the disposition made by the will, it may tend to raise a reasonable doubt of the necessary sanity of the maker and of his free agency uncontrolled by some undue influence, in connection with the attending circumstances and conduct of those surrounding the testator. At the same time it was expressly said that then it was only a circumstance to be considered with other facts and circumstances in evidence, and not per se sufficient to justify the setting aside the will. The same general doctrine is asserted in the following cases: *Middleditch v. Williams*, 45 N. J. Eq., 726, 730; *Barker v. Comins*, 100 Mass., 477, 483; *Zimbich v. Zimbich*, 90 Ky., 657, 661; *In re Wilson*, 117 Cal., 262, 267; *Kaunders v. Montague*, 180 Ill., 300, 305; *Aylward v. Briggs*, 145 Mo., 604, 612; *Sturdevant's Appeal*, 71 Conn., 392, 397.

Cases may be conceived in which, after the introduction of evidence tending to show the exercise of undue influence, and especially when, in connection with evidence tending to show mental or physical weakness of the testator, an apparently unnatural and unjust disposition, in some accord with the purpose with which the undue influence may have been exercised, would constitute a circumstance proper for consideration as tending to support the contention of undue influence. Where testamentary capacity is put in issue, written or oral declarations of the testator tending to show mental weakness or the existence of insane delusions, are competent evidence; and, for a stronger reason, the provisions of a will containing irrational declarations, or recitals tending to show a want of understanding or memory on the part of the testator in regard to the amount and character of his estate, or to the natural objects of his bounty, would be proper circumstances for consideration as affording intrinsic evidence of incapacity at the very time, and in regard to the very matter to which the inquiry is directed.

When a will is deemed unreasonable it should be because it contains some such intrinsic evidence of mental unsoundness, insufficient memory, or insane delusion, other than the mere presumed unjust or unequal distribution made therein of the estate. In other words, where the fixed purpose of the testator is stated in rational language, indicating no want of knowledge or

memory in respect of his estate, his family, or the ordinarily natural objects of his bounty, the mere fact that he has exercised his lawful power to disapprove the reasonable expectations of those nearest him, and the natural and proper objects of his bounty in the opinion of the community, and has therefore done an apparently unnatural and unjust thing, is not to be regarded as unreasonable in the sense of evidencing mental incapacity.

Differing in policy from the Roman law, ours has always recognized the right of a testator to disinherit those who would take his estate in case of intestacy; and whatever public opinion may, from time to time, be in respect of that policy, it is given effect to in the statutes governing in this District. Whatever the policy of the law permits as reasonable and just ought not therefore to be denounced as unreasonable and declared a circumstance from which want of testamentary capacity may be inferred.

The jury trying the issue necessarily know the contents of the will, and are likely enough to be influenced, to some extent, by their sense of its apparent injustice, without being charged to consider such a provision as a circumstance, in connection with other independent facts and circumstances introduced in evidence, in their determination of the issue. Neither courts nor juries are invested with the power to change or disregard a rule of public policy recognized by legislative authority. Our opinion is that while the policy of the law of wills remains unaltered by legislative enactment, a so-called unnatural and unjust disposition of the testator's estate by a will that in its terms and recitals betrays no other indication, whatever, of a disordered mind or defective memory, can not be submitted to the jury as a circumstance indicative of the want of the necessary testamentary capacity. Where, however, there is other evidence tending to show that the testator labored under an insane delusion, at the time of making the will, with respect to a certain person or thing, and the distribution made of the estate is in accord therewith, or indicates the effect of such delusion, then, as in the case of undue influence before mentioned, such provision may become a circumstance to be considered in connection with the extrinsic evidence tending to show the existence of such insane delusion.

5. This brings us to the consideration of the last errors assigned on exceptions taken to parts of the charge relating to monomania and insane delusions of the testator. These will be stated and disposed of together. At the request of the caveators the following special instructions were given to the jury.

"III. As respects the testamentary capacity of the testator, you are instructed that what you are to consider is his capacity to make the particular will in controversy, and, if you find from the evidence, that the mind of the testator, at the time of making the will in controversy, was so disturbed or affected that his reason and judgment became lost in respect of considering the natural objects of his bounty to such an extent as to render him unable, fairly and justly, to consider the natural claims upon him of those who should have been the objects of his bounty, you are instructed that he did not possess the necessary testamentary capacity to make a will, and, in

considering whether the mind of the testator was so disturbed or affected, as is above assumed, you should consider, *in connection with all the other facts in the case*, his domestic relations, especially during the few years preceding his death and the making of the will in controversy; and if you find that such relations caused in the testator a bitterness or aversion towards his wife, of such a character and to such an extent as to amount, in effect, to a monomania on the subject and so to possess his mind as to make the said bitterness or aversion dominant over him when considering his children, and their natural claims upon him as the objects of his bounty; and, if you also find that, when about to make the said will, the testator would have made it in favor of his children but for the belief, *arising from such alleged monomania*, that he could not do so without his wife's obtaining possession and control of such property as he might, by his will, leave to his children, then you should find that the testator did not possess the requisite testamentary capacity to make the will in controversy, and should, accordingly, answer the second issue 'no.'"

"XII. If the jury believe that the testator was laboring under a monomania concerning his wife, and that his will disinheriting his children, was the direct offspring of such monomania, then the jury is instructed that the will must be regarded as invalid, even though the general capacity of the testator to do ordinary business be unimpaired, provided such monomania so affected the testator in making his will, as to show him to be of unsound mind in that particular."

The caveatees excepted to the foregoing instructions, because monomania was not defined, and because there was no evidence in the case to which they were applicable.

Thereafter, the court charged the jury further as follows:

"Now, one further word: The word 'monomania' has been used in some of the instructions, and in the argument of counsel, and in order that you may have a clear idea as to the meaning of that word, I will say that Webster defines it as derangement of the mind, in respect to a single subject only; also such a concentration of interest upon one particular subject or train of ideas, as to show mental derangement of the mind, in regard to a single subject; another definition given in the law, is that monomania is insanity in which there is a more or less complete limitation of the perverted mental action to a particular field, as a special delusion or an impulse to do some particular thing, though the other mental functions may show some signs of degeneration.

"There has been some evidence tending to show a delusion of this kind with reference to the two older children—the claim, at least, made by the testator that they were not his children. But there is not a syllable of evidence in the testimony, there is not a syllable of evidence, to support any such conclusion as that, if he had it. I do not say that he had any such delusion, but there has been some claim here that he said so, that he claimed that they were not his children, or he was in doubt as to whether they were his children or not. There has not been any evidence upon that subject here at all; and I only put those definitions before you so that you may clearly understand what is meant by counsel here in referring to monomania and delusions

that might affect the making of this will."

The caveatees excepted to this charge as to there being no evidence to show that the two older children were not the testator's, "for the reason that it makes no difference whether they were or not, if he believed there was any doubt about it."

Whether the definition of monomania, as contained in the foregoing is correct in the abstract, it is immaterial to consider.

If the testator was affected with monomania at all under the testimony before the jury, it must have consisted of an insane delusion as regards the paternity of the two older children who are expressly disinherited.

Insane delusion has been well defined by the Supreme Court of California as follows: "In ordinary language a person is said to be under a delusion who entertains a false belief or opinion which he has been led to form by some deception or fraud, but it is not every false or unfounded opinion which is in legal phraseology a delusion, nor is every delusion an insane delusion. If the belief or opinion has no basis in reason or probability, and is without any evidence in its support, but exists without any process of reasoning, or is the spontaneous offspring of a perverted imagination, and is adhered to against all evidence and argument, the delusion may be truly called insane; but if there is any evidence, however slight or inconclusive, which might have a tendency to create the belief, such belief is not a delusion. One can not be said to act under an insane delusion if his condition of mind results from a belief or inference, however irrational or unfounded, drawn from facts which are shown to exist. 'An insane delusion is not only one which is error, but one in favor of the truth of which there is no evidence, but the clearest evidence to the contrary. It must be a delusion of such character that no evidence or argument will have the slightest effect to remove.' *Merrill v. Rolston*, 5 Redf., 252. . . . 'Delusions are conceptions that originate spontaneously in the mind without evidence of any kind to support them, and can be accounted for on no reasonable hypothesis. The mind that is so disordered imagines something to exist or imputes the existence of an offense which no rational person would believe to exist or to have been committed without some kind of evidence to support it.' *Potter v. Jones*, 20 Or., 249." *Estate of Scott*, 128 Cal., 57, 62.

Tested by this definition, which has the support of many well-considered cases, the charge was clearly erroneous. In the first place, the testator's opinion of his former wife was immaterial. The question of her conduct had been settled by the decree of divorce which terminated their legal relations. In the second place, it was not in accordance with the facts before the jury to say that there had been some evidence tending to show an insane delusion with respect to his being the father of the two older children, and that there "was not a syllable of evidence to support any such conclusion as that, if he had it." This substantially concedes that he labored under no insane delusion as regards the paternity of the youngest child, born apparently while the divorce suit was in progress. The facts developed in that suit appear to have convinced the testator that he was not the father of the youngest child, and to have tended to raise some doubt in his mind as to the paternity of the two older ones. Then the evidence of his declara-

tions made it to appear that he claimed to have acquired further information, relating to earlier misconduct of their mother, by which he was led to disclaim their paternity also. The source and nature of this information were declared to two persons. The information might have been false, and he might have been largely induced to give credit to it, by the undoubted fact of the mother's later misconduct. While, therefore, he might have acted under a delusion, it was not an insane delusion; that is to say, a conception originating spontaneously in the mind, without evidence to support it, and which could be accounted for on no reasonable hypothesis. As was said in a recent case in Pennsylvania: "It is never a question of soundness of view, but the proper inquiry always is whether the party imagined or conceived something to exist which did not in fact exist, and which no rational person in the absence of evidence would have believed to exist." *Murdock's Appeal*, 185 Pa. St., 203; see *Bennett's Estate*, 201 Pa. St., 485, 490.

Had there been evidence showing that there was no possible foundation for the impeachment of the mother's chastity before the birth of those children, and that the statements made to the testator of her misconduct were false and had been maliciously made, yet, if in the absence of such proof, the testator believed them to be true and acted under that belief, it still could not be said that he was the victim of an insane delusion. That condition could only be shown by evidence that proof of their falsity, which no sane mind could fairly reject, had been furnished him, notwithstanding which he clung to his unfounded opinion and acted in accordance with it.

There was no such proof, and no evidence whatever tending to show that testator's disbelief in the paternity of the children was the effect of an insane delusion. Yet the effect of the charge was to indicate to the jury that the testator's doubt was evidence of delusion. They were then told that there was no evidence to support the testator's doubt. Plainly, the jury could come to no other conclusion than that the testator labored under an insane delusion as regards the paternity of the two older children. The mere fact that one disclaims the paternity of children born of his marriage, and disinherits them for that reason, carries no presumption of insane delusion. If he act under a delusion superinduced by false testimony, of the falsity of which he has no knowledge, it can not be said that he is the victim of an insane delusion.

If, on the other hand, he act under a delusion for which there is no reasonable foundation, or retain a belief, which, under the conditions shown, every sane mind would reject or surrender, then it can be said that he was the victim of an insane delusion. In the former case the delusion is the product of reason; in the second a figment of the imagination.

There being no evidence tending to show that the testator labored under a delusion, even, much less an insane delusion, there was no foundation for either the special instructions or the general charge as given to the jury.

For the reasons given, the judgment must be reversed with costs, and the cause remanded with directions to set aside the verdict and order a new trial. It is so ordered.

Reversed.



## Court of Appeals of the District of Columbia.

THOMAS E. DRAKE, APPELLANT,  
v.  
UNITED STATES EX REL. JAMES A.  
BATES & CO.

### INSURANCE BROKERS; LICENSE; MANDAMUS.

1. All that persons proposing to take out the "general insurance license," provided for by section 654 of the Code, are required to do is to apply therefor to the superintendent of insurance and pay the statutory fee of fifty dollars.
2. No power is conferred upon the superintendent of insurance to impose as conditions precedent to the issue of such a license the conditions attempted to be imposed upon the petitioners in this case.
3. In respect of issuing such a license to an applicant therefor, the superintendent of insurance is a ministerial officer, vested with no discretionary power in the premises; and having no power to add to the requirements of the law, it is his plain duty to receive the fee when tendered and issue the formal license required by the law.
4. An order granting a writ of mandamus to compel the superintendent of insurance to issue to the relators a "general insurance license" affirmed.

No. 1846. Decided February 14, 1908.

APPEAL by respondents from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,799, granting a writ of mandamus. Affirmed.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the appellant.

Mr. W. J. LAMBERT and Mr. R. H. YEATMAN for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

James A. Bates & Co., a partnership composed of James A. Bates and E. B. Townsend, residing and doing business in the District of Columbia, filed this petition against Thomas E. Drake, superintendent of insurance of the said District, for a mandamus to compel the said Drake to issue to them a license for the fiscal year commencing May 1, 1907, and ending April 30, 1908, entitling them to carry on the business of insurance agents.

The petition alleged that for some years past petitioners have been engaged in the insurance and brokerage business in said District, duly licensed therefor, and have for some years represented, among other companies, the Firemen's Insurance Company of the District of Columbia, of which they were one of the general agents. It becoming necessary for them to renew the license for the year 1907, they made application therefor. The superintendent furnished them with a blank form, requiring them, under oath, to append a true list of the names and addresses of all persons from whom applications or business, either directly or indirectly, had been received between May 1, 1906, and April 30, 1907, inclusive. The form attached contained headings for entry of name of agent, address, class (as principal agent, ordinary, industrial, or broker), and date of placing first risk. A notice was also given that, as a condition precedent to the issue of the license requested, they should also furnish the names of persons to whom they had paid commissions, in order to secure business. Petitioners deny the right of the superintendent to impose any such conditions, and aver that even if the power to make rules for the issue of licenses existed, the

requirements aforesaid are arbitrary, unreasonable, and unjust, and compliance therewith might become the basis for their prosecution. Petitioners declined to comply with the said requirements and tendered the sum of \$50 to the said superintendent, as the lawful fee, and demanded the issue of their license. The superintendent refused to receive the money and to issue the license.

They further allege that the Firemen's Insurance Co. wrote them on September 9, 1907, declining to pay commissions on any business done for them until notified by the superintendent that they were licensed insurance brokers. They alleged damage to them by the refusal to issue the license, because it deprives them of a vested right to do business as they had long been accustomed to do.

The return to the rule to show cause, made by the superintendent, admits the general allegations of the petition in regard to the business of the petitioners, and assigns cause for refusal to issue the license as follows:

"Answering paragraph four, defendant says that the said application for a license to act as agent of the Firemen's Insurance Company was made to the department of insurance by the said company; that it is the custom in the District, and the rule of the insurance department, that when agents are to be licensed the insurance company makes a requisition upon the superintendent of insurance giving a list of agents and their addresses, whom it desires to be licensed as its agents; that the Firemen's Insurance Company, on the 30th day of April, 1907, filed such a requisition with the defendant asking the licensing (among others) of Jas. A. Bates & Co. (E. B. Townsend); a copy of said requisition is filed herewith and prayed to be read as a part hereof; that the said affidavit and blank to be filed, as set forth in said paragraph, was not sent to the petitioners by the defendant, but was sent by the defendant to the Firemen's Insurance Company with the statement that the information called for therein should be furnished by the said company as a condition prerequisite to its being licensed for the ensuing year; that thereupon the said company called upon the said petitioners to furnish the said information, but the said petitioners refused to furnish the same to the said company, and upon the said company's insisting upon the same withdrew as agents of the said company and the latter thereupon wrote the defendant revoking its said requisition calling for the licensing of the petitioners as agents for the said company, as follows, on August 21, 1907:

"I respectfully notify you that Messrs. Jas. A. Bates & Co., have, this day, terminated their agency with this company. I therefore withdraw the requisition which was sent to your department for the issuance of a license to them as agents of this company.

"That the defendant did not send a notice to the petitioners that they must furnish the information called for in said blank as a condition precedent to the issuance to them of a license, but the said notice was sent, as above stated, to the Firemen's Insurance Company; that the statement in said petition that such information is called for to satisfy the personal curiosity of the defendant is false, malicious, and scandalous, nor was such information to be used as a basis of future criminal prosecution against the said peti-



tioners or any of those from whom such information was obtained or to be obtained.

"5. Answering paragraph five, defendant says that the said Firemen's Insurance Company was called upon to furnish the said information—not the petitioners—to the department of insurance; that it was supposed the said company would do this through its various officers and agents; that it could do so if it desired, and that it seemed to be willing and anxious to assist the department in obtaining such information; that the petitioners were not called upon by the said company to furnish information they did not possess, and that, if they were complying with the law they had nothing to fear by giving such information to their principal to be in turn given to the superintendent of insurance."

The respondent admits the tender of the money for the license, but says it was made after the Firemen's Insurance Company had withdrawn the requisition for the petitioners as its agents; and further, because the said company had not been licensed to do business in the District. The conclusion is "that a license to an agent can not lawfully issue until the company for which such agent is to act is first licensed." The return further says that the agency of the said company was terminated by the petitioners and not by the company, which is willing to continue said agency only on condition that petitioners furnish the said company the information called for the said blank form furnished by respondent, which in turn said company would deliver to respondent.

The court sustained a demurrer to this return, and entered an order for the issue of the mandamus, from which the respondent has appealed.

The right of the petitioners is founded on section 654 of the Code, which is part of the subchapter V of Chapter XVIII, relating to corporations. So much of the same as is pertinent is here given:

"Sec. 654. Insurance Agents.—No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit without first having obtained a license as an insurance agent or broker from the superintendent of insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words 'general insurance license,' and for such license the sum of fifty dollars shall be paid annually in the month of March to the collector of taxes of said District. . . . No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or corporation doing business in the District of Columbia not licensed as herein provided. Any violation of this section shall be a misdemeanor and, on conviction in the Police Court of said District, be subject to the penalties provided in section six hundred and forty-eight aforesaid for the misdemeanors therein described: Provided, that licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof: . . ."

The respondent, as superintendent of insurance, relies upon the power to make regulations relating to the licenses required by section 654, as conferred by other sections. Section 645, which creates the office of superintendent, contains this clause: "Said superintendent shall have supervision of all matters pertaining to insurance companies and beneficial orders and associations, subject only to the supervision of the Commissioners." Section 646 provides in its first clause: "It shall be the duty of the said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders and associations, doing business in the District are faithfully executed." The section then proceeds to make regulations for the permission of such companies to do business in the District. The concluding sentence of the section reads: "Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the Commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance to conform in doing business in the District." A number of other sections prescribe many requirements to be complied with by companies doing business in said District, which relate to their reports, capital required, deposits of money by foreign companies, and so forth, besides similar reports to be made by local companies. Sections 645 to 653, inclusive.

On January 30, 1902, the superintendent addressed a communication to the Commissioners, in which he said: "It being the duty of the superintendent of insurance to interpret and apply the Code of Law of the District . . . relating to insurance companies and insurance agents, I, therefore, concurring in the opinion of the city solicitor, beg leave to submit to you for your approval the following rulings in sections 646, 654, and 655, in regard to licenses, viz.:" His first ruling was that section 646, so far as it refers to licenses, relates to the insurance company itself. Second: Sections 654 and 655 refer to agencies and not to companies, unless acting as agents. He then proceeds to enumerate the distinguishing features of his ruling in respect to companies, agents, licenses and fees to be paid, classifying them as follows: (2) Each local and foreign company desiring to act as agent for receiving business for another company, or from agents or superintendents thereof, is required to procure a "general insurance license," fee to be paid \$50.00. (3) Foreign companies must be licensed under section 646 before they can in any way do business in the District. Issuing its own policies not required to be represented by a general agent. If it has such representative he must hold a "general insurance license," and pay a fee of \$50. (4) The "general insurance license" may be issued to persons, or firms of two persons, or to a corporation; and under this form of license an unlimited number of companies may be represented by an agent; and power is granted to the licensee to appoint solicitors for each company he represents. Policy writing agent may also act as broker. Fee, \$50. (5) Broker's "General Insurance License."—This carries with it all the privileges granted to a policy writing agent, except that the licensee can not issue policies, nor appoint solicitors. A broker represents no company but places the business he contracts wherever he elects in companies licensed to do business in the District.

Fee, \$50. (6) Solicitor's License.—A solicitor must be employed in some capacity by a company or its principal agent. License privilege limited to one company.

It is quite clear that no provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one that can be exercised by the courts alone. If the rulings aforesaid, approved by the Commissioners, are intended as regulations for the proper enforcement of the law, they find no support in the provisions before stated as relied on by the superintendent. Whatever the power in regard to the enforcement of the law, and the making of regulations, that was conferred by the provisions of section 646, it does not embrace the power to make regulations for the classification of persons required to take out a "general insurance license," by the provisions of section 654. That section makes no such classification as that declared by the superintendent. It embraces those who act as agents for any insurance company, and as brokers or agents, requiring one fee and one form of license which must have printed conspicuously on its face the words "general insurance license." The solicitors for general insurance and that known as "industrial" are provided for separately in section 655. Section 654 imposes the duty upon every broker or agent to obtain this license, and when so licensed there is nothing to prevent him from acting as the agent of any company or companies, or from procuring insurance in any company, provided the same shall be authorized to do business in the District. If he, while doing business under said license shall violate any provision of the law in respect of the payment of commissions, rebates, or compensation, he is amenable to the punishment for the offense that is prescribed in the same section.

All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business through or issue insurance at the request of any licensed agent or broker. The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses; and if located outside the District must appoint some suitable person as attorney upon whom legal process may be served. Section 646. All that persons who propose to take out the "general insurance license" are required to do is to apply therefor to the superintendent and pay the statutory fee. They have then the power to make arrangements for insurance with any company authorized to do business in the District upon such terms and with such general or special authority as may be agreed upon. No power is given the superintendent to impose any conditions upon them such as were imposed upon the petitioners in this case, as conditions precedent to the issue of the license. The regulatory powers of the superintendent are limited by law to the companies, and do not extend to persons seeking to engage in business as agents and brokers under a "general insurance license." His charge to see that the laws are executed authorizes him, upon information received of violations of the law by such licensed agents and brokers to cause them to be prosecuted therefor. In respect of issuing the

license to such applicants, the superintendent is a ministerial officer, vested with no discretionary power in the premises. The calling of agents and brokers is a legitimate and lawful one, though subject to the power of the Government to compel them to pay a license therefor. As to them the imposition of the fee is apparently for the purpose of raising revenue. It is the right therefore of any citizen to engage in the calling at will upon tendering the fee required by law to the officer charged with the duty of receiving it and issuing the license. With no power to add to the requirements of the law, it is his plain duty to receive the fee when tendered and issue the formal license required by the law. *McFarland v. Miller*, 18 App. D. C., 554, 564: 29 Wash. Law Rep., 753.

Believing that the court was right in ordering the mandamus to issue, the judgment is affirmed with costs. Affirmed.

### Legal Notices

#### FIRST INSERTION.

Beal & Marine, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Agnes Wilson Hedges, Deceased.

No. 16,087. Administration Docket 38.

Application having been made by Walter S. Wilson for probate of the last will and testament of Agnes Wilson Hedges, and for letters of administration de bonis non et l. a. upon her estate, it is ordered this, the 26th day of February, A. D. 1908, that George S. Wilson, Allen G. Wilson, William R. Wilson, and all others interested in said estate, appear in said court at 10 o'clock A. M., on Wednesday, the 8th day of April, A. D. 1908, to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Herald* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. A true copy.  
Attest: James Tanner, Register of Wills. 9-3t

James A. Toomey and Lorenzo A. Bailey, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary Hoskins Lewis, Deceased.

No. 14,193. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by L. Fleet Luckett, it is ordered this 24th day of February, A. D. 1908, that the unknown next of kin and the unknown heirs at law of the said Mary Hoskins Lewis, deceased, and of Isaiah W. Hoskins, deceased, and all others concerned, appear in said court on Friday, the 3d day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Post* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

William D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Helen L. Sumner, Deceased.

No. 16,016. Administration Docket 38.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William D. Hoover, executor named in said will and codicil, it is ordered this 28th day of February, A. D. 1908, that Estelle Daniels, and all others concerned, appear in said court on Thursday, the 3d day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Evening Star* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Legal Notices.**

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Liston, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of February, 1908. **PATRICK J. LISTON**, 808 4th st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,006. Administration. [Seal.] 9-3t

**J. Wilmer Latimer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Montgomery Fletcher, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **HERBERT MARSHALL FLETCHER**, care of J. Wilmer Latimer, Fendall Bldg., Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,079. Administration. [Seal.] 9-3t

**Nathaniel Wilson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Norman Galt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **EDITH BOLLING GALT**, 1308 20th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,009. Administration. [Seal.] 9-3t

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles Shiels Wainwright, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **CHARLES HOWARD WAINWRIGHT**, 7 Wall st., New York City. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,846. Administration. [Seal.] 9-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Ellen A. Bell, Deceased.**  
**No. 14,967. Administration Docket—.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by American Security and Trust Company, it is ordered this 24th day of February, A. D. 1908, that Louis Knox Bell, and all others concerned, appear in said court on Monday, the 30th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Legal Notices.**

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Beverly Jackson, Deceased.**  
**No. 15,061. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John W. Glennan, it is ordered, this 21st day of February, A. D. 1908, that all unknown heirs at law and next of kin, and all others concerned, appear in said court on Monday, the 30th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Hohmann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 21st day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of February, 1908. **HENRY F. W. ACHTERKIRCHEN**, 205 7th st. N. W.; **MAURICE D. ROSENBERG**, Jenifer Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,073. Administration. [Seal.] 9-3t

**Walter C. English, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Wilber Huson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of February, 1908. **ADELAIDES HUSON**, 211 East Capitol st. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,084. Administration. [Seal.] 9-3t

**Birney & Woodard, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Francis S. McIlhenny et al. v. Cyrus W. Chappel et al.**  
**No. 27,555. Equity.**

Upon consideration of the report of Arthur A. Birney, trustee, that he has sold the lot and unfinished building No. 815 8th st. N. E., at the price of \$3,100, it is this 27th day of February, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 23d day of March, 1908. Provided that a copy of this order be published once a week for three weeks before said date in The Washington Law Reporter and The Washington Herald. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. K. Young**, Clerk, by **Wm. F. Lemon**, Asst. Clerk. 9-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of John Collins, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of February, 1908. **FRANK S. BRIGHT**, Executor. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,064. Administration. [Seal.] 9-3t

**Legal Notices.**

**E. H. Thomas and Jas. Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**  
**In re the Extension of Genesee Place and Summit**  
**Place, in the District of Columbia.**  
**District Court, No. 728.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress entitled "An act to provide for the extension of Genesee Place and Summit Place, in the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the extension of Genesee Place, Lanier Heights, northwest, in said District, in a southwesterly direction in prolongation of its present lines, and to extend Summit Place in an easterly direction, with a width of forty feet, to connect with said extension of Genesee Place, said extension of Summit Place to be north of the northerly line of lot 198 of Lanier Heights, and said line extended, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia, to assess the damages each owner of land to be taken may sustain by reason of the extension of the aforesaid streets, and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, plus the costs of this proceeding, upon the land abutting upon the said streets to be extended, and also upon all other pieces and parcels of land which the jury may find will be benefited by the said extension of the said street, as provided for by the aforesaid act of Congress. It is by the court, this 21st day of February, A. D. 1908, ordered, that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 23d day of March, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 23d day of March, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal or his deputies upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia and upon the tenants and occupants of the same before the said 23d day of March, A. D. 1908. By

[Seal] the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 9-11

W. C. Sullivan, Solicitor

**In the Supreme Court of the District of Columbia.**  
**Luther A. Swartzell et al., Executors, etc., Claimants,**  
**vs. Edmund Shaw et al., Defendants.**  
**No. 37,568. Equity.**

The object of this suit is to obtain the instructions of the court as to the duties of the claimants as executors and trustees under the will of the late Mary Jane Shaw. On motion of the claimants it is, this 21st day of February, A. D. 1908, ordered that the defendants, Trustees of the Presbyterian Church at Phillipsburg, Pa., Presbyterian Church of Phillipsburg, Edmund Shaw, John H. Shaw, Robert Saxton Shaw, Nettie M. Scott, William H. Shaw, Walter W. Shaw, and Laura G. Shaw, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks

[Seal] In The Washington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 9-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

**E. H. Thomas and Jas. Francis Smith, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**  
**In re Extension of T Street (Formerly W Street)**  
**Northwest, District Court, No. 729.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act approved February 27th, 1907, entitled "An act authorizing the extension of T street (formerly W street) northwest," have filed a petition in this court praying the condemnation of the land necessary for the extension of T street from 85th to Wisconsin avenue, formerly High or 82d street west, with a width of sixty feet, and from Wisconsin avenue to the east side of proposed Rock Creek drive with a width of ninety feet, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of the aforesaid street and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, plus the costs of this proceeding, upon the land abutting upon the said street to be opened, and also upon all other pieces and parcels of land which the jury may find will be benefited by the said opening of the said street, as provided for by the aforesaid act of Congress. It is by the court, this 21st day of February, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 25th day of March, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Herald, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 25th day of March, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia and upon the tenants and occupants of the same before the said 25th day of March, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 9-11

**SECOND INSERTION.**

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jane H. Hooff, Deceased.**  
**No. 15,028. Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by William A. Hooff, it is ordered this 17th day of February, A. D. 1908, that William Hooff, John Lester Hooff, Mary Hooff, Clara Hooff, Bettie Hooff, Ellie Hooff, Mollie Hooff, Frank Hooff, Edward Hooff, and Joseph Hooff, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 88t.

[Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 88t.

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****Lambert & McLean, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding a Special Term for Probate Business.  
In re Estate of Christiana C. Queen, Deceased.  
Probate No. 15,007.

Application having been made herein for probate of the last will and testament of said deceased, Christiana C. Queen, and for letters testamentary on the estate of said Christiana C. Queen, by William Gordon Crawford, and citation having been issued against the parties named herein, and having been returned by the marshal of the District of Columbia as not to be found as to each of them, it is ordered this 18th day of February, A. D. 1908, that Mrs. Joshua Tevis, Walter Miller, Pierce Crosby Raborg, Walter Q. Raborg, Annie Crosby Bryant, Benjamin Gratz Crosby, Miriam Gratz Crosby, Pierce Crosby, and Miss Jean A. Crosby, and all others concerned, appear in said court on Friday, the 27th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post, once a week for three successive weeks before the return day herein mentioned, the first publication to be not

[Seal] less than thirty days before said return day.  
ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of Probate Court. 8-St

**Howard Boyd, Attorney**

In the Supreme Court of the District of Columbia.  
Daniel J. Heffner and John J. Pillion, Copartners, trading under the firm name and style of Heffner and Pillion, Plaintiffs, v. J. P. Robinson and W. O. Scully, Copartners, trading under the name and style of Palestine Stables, Defendants.

At Law, No. 49,987.

The object of the suit is to obtain judgment in the sum of twelve hundred and forty-six dollars and sixty-seven cents, and interest, and to subject certain property and credits, attached herein, to the payment thereof. On motion of the plaintiffs, it is this 14th day of February, A. D. 1908, ordered that the defendant, J. P. Robinson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first

[Seal] publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills, by Fred C. O'Connell, Asst. Clerk. 8-St

**Lawrence Hufty, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Cara H. Wilson, Deceased.

Administration No. 14,709

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Malcolm Hufty and Theodore D. Wilson, it is ordered this 18th day of February, A. D. 1908, that Arthur Roxby and William H. Roxby, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first

[Seal] publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 8-St

**L. Melendez King, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles C. Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. W. CALVIN CHASE, 1109 Eye St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,970. Administration. [Seal.] 8-St

**Legal Notices.**

D. W. O'Donoghue and J. R. Fague, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Term.  
Louis M. Paxton et al., Complainants, v. John W. Paxton et al., Defendants. Equity No. 27,376.

DECEED.

On consideration of the report of Daniel W. O'Donoghue and Joseph R. Fague, trustees, filed herein, showing that they have sold to Thomas J. Harford, for \$1,500, parts of lots 117 and 118, in square 1240, described as follows: Beginning at the southeast corner of lot 118 and running north on the west line of 28th street 23.60 feet to north line of premises 1344 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 23.60 feet to the south line of lot 117; thence east with the south lines of said lots 117 and 118 the distance of 117 feet to the point of beginning, being improved by premises 1342 and 1344 28th street northwest; and to Charles H. Parker, for \$1,150, parts of lots 117 and 118, in square 1240, described as follows: Beginning on the west line of 28th street at a point 23.60 feet north from the southeast corner of said lot 118, and running thence north with the said west line of the said street 24.04 feet to the north face of the north wall of house numbered 1346 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 24.04 feet to a point opposite to the place of beginning, and thence east 117 feet to the place of beginning, being improved by premises 1346 28th street northwest; and to Mary T. Mynsbridge, for \$510, part of lot 122, in square 1230, described as follows: Beginning for the same at the end of 47 feet from the west line of said lot and running thence east with the south line of Beall (now called O street) 29 feet 6 inches, more or less; thence south and parallel with the said west line until it intersects the line of Holmead's addition to Georgetown; thence with the line of said addition to the depth of said lot 120 feet; thence west 2 feet and 6 inches, more or less; thence northerly and parallel with the said Holmead's Addition until it strikes the southwest corner of the back building of the house standing on the lot hereby intended to convey; thence with the dividing partition separating the two houses to the south line of Beall (now O street) to the place of beginning. It is, by the court, this 18th day of February, 1908, adjudged, ordered, and decreed that said sales be, and they are hereby, ratified and confirmed unless cause to the contrary be shown on or before the 19th day of March, 1908. Provided a copy of this order be published in The Law Reporter once a week for three consecutive weeks prior to said last

[Seal] mentioned date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-St

**L. A. Dent, Attorney**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Gibbons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of February, 1908. FRANK A. GIBBONS, CHAS. F. GIBBONS, 3135 M St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,062. Administration. [Seal.] 8-St

**Hugh F. Taggart, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Florine A. Brewer, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 9th day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of February, 1908. LEWIS H. HINES, by Hugh F. Taggart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,997. Administration. [Seal.] 8-St

**Legal Notices.****Emanuel M. Hewlett, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Herman L. Livingston, Deceased.  
No. 15,002. Administration Docket.**

Application having been made herein for letters of administration on said estate, by Margaret B. Albert, it is ordered, this 14th day of February, A. D. 1908, that Ada B. Jones, Eureka B. Matthews, Mary B. Euing, Guy L. McKeal, Christopher Boxeman, Fannie Thompson, Gladys Thompson, Harry A. Thompson, and all others concerned, appear in said court on Tuesday, the 24th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-St

[Seal]

**David Rothschild, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Joseph A. Kaschka, Deceased.  
No. 15,024. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles E. Gerner, it is ordered, this 17th day of February, A. D. 1908, that Ida Hohl, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-St

[Seal]

**H. W. Sohon, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****James P. Healy et al. v. Francis Cunningham et al.  
Equity, No. 27,272.**

On consideration of the report of James P. Healy and Henry W. Sohon, trustees in this cause, it is on this 17th day of February, 1908, ordered and decreed that the sale reported by them of lot A in block three (3) of Howard University subdivision of Effingham place, as per plat recorded in liber district No. 1, folio 76½ and 77, of the records of the office of the surveyor of the District of Columbia, to George Urlicio for thirty-three hundred and seventy-five (\$375) dollars, be ratified and confirmed unless cause to the contrary be shown on or before the thirtieth day after the date hereof, and that this order be published once a week for three weeks in The Washington Law Reporter previous to said date. **ASHLEY M. GOULD, Justice.** A True copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 8-St

**Ivan Heideman, Attorney****In the Supreme Court of the District of Columbia,  
Eleanora Lippard, Plaintiff, v. William A. Lippard,  
Defendant. At Law, No. 50,123.**

The object of this suit is to recover from the defendant the sum of \$1,001, and interest thereon amounting to \$63, said sum being due under a certain agreement entered into between the parties hereto on December 22, 1903, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 20th day of February, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said date. By the Court: **WRIGHT, Justice.** True copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 8-St

[Seal]

**Legal Notices.****Thompson & Laskey, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth McKay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of February, 1908. **WILLIAM M. STEWART, 910 E st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,768. Administration. [Seal.]** 8-St

**J. A. Maedel, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Christian P. Dieterich, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of February, 1908. **CHARLES W. LEDERER, 1107 Sixth st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,042. Administration. [Seal.]** 8-St

**Geo. Francis Williams, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Vermont, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Wilcox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **EMMA N. WILCOX, care of Geo. F. Williams, 900 F st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,064. Administration. [Seal.]** 8-St

**M. J. Colbert, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Weser, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of February, 1908. **EDWARD F. CUMMISKEY, 1242 You st. N. W.; MICHAEL J. COLBERT, 412 5th st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,914. Administration. [Seal.]** 8-St

**THIRD INSERTION.****Isaac R. Hitt, Jr., Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward M. Truell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of February, 1908. **ISADORA L. TRUPELL, 1315 Clifton st.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,827. Administration. [Seal.]** 7-St



**Legal Notices.****Childen & Fenning, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Adolph Wolschendorf, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. FREDERICK A. FENNING, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,895. Admn. [Seal.] 7-3t

**J. C. Mattingly, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of C. Louise Dahler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of February, 1908. GUSTAV H. DAHLER, Bladensburg, Md.; HENRY C. DAHLER, 235 N. J. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,892. Administration. [Seal.] 7-3t

**Richard P. Whiteley, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of New York City, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of H. Bowyer McDonald, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of September, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. DONALD McDONALD, Admr., care of R. F. Shepard, 819 17th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,822. Administration. [Seal.] 7-3t

**Jos. H. Stewart, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William H. Outlaw, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. LIZZIE OUTLAW, 1787 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,900. Administration. [Seal.] 7-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cecelia Howard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 10th day of February, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Thomas R. Jones, President; GEORGE HOWARD. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,987. Admn. [Seal.] 7-3t

**Legal Notices.****Birney & Woodard, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

**William H. Spelshouse, Complainant, v. The Unknown Heirs and Devisees of Henry Bradford et al.**  
No. 27,568. Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession lot three (3) in square 650, in the city of Washington, D. C. On motion of the complainant, it is, this 10th day of February, 1908, ordered that the defendants, J. F. Hilton and William M. Harper, cause their appearance to be entered on or before the fortieth day exclusive of Sundays and legal holidays occurring after the date of the first publication of this order, and that the defendants, the unknown heirs and devisees of Henry Bradford, deceased, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of the order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Washington [Seal] Times. By the Court: HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 7-5t

**E. Hilton Jackson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Stutz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of February, 1908. JOHN A. STUTZ, 1645 18th st., Wash., D. C.; GEORGE F. STUTZ, 475 State st., Albany, N. Y. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,132. Administration. [Seal.] 7-3t

**F. H. Stephenson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Webber, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of February, 1908. AUSTIN B. CHAMBERLIN, 489 8d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,085. Admn. [Seal.] 7-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, which was, by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Samuel Beckley Holabird, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 3d day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of February, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,228. Administration. [Seal.] 7-3t

Justice blanks of every description for sale at this office.



**Legal Notices.**

**Woodbury Blair, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Merton Mitchell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of February, 1908. **ELIZABETH PATTERSON MITCHELL**, care of Woodbury Blair, Corcoran Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,086. Administration. [Seal.] 7-3t

**Darr & Peyser, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine McCarthy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. **RICHARD A. CURTIN**, 705 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,001. Administration. [Seal.] 7-3t

**H. Winship Wheatley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna J. Seymour, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of June, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of February, 1908. **ELIZA OTTO SEYMOUR**, 1620 19th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,068. Administration. [Seal.] 7-3t

**Michael J. Keane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of February, 1908. **MARY LANGLEY**, 100 2d st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,911. Administration. [Seal.] 7-3t

**W. B. Reilly, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Elizabeth Hecht, Complainant, v. Victor Hecht, Defendant.** Equity No. 27,584.

The object of this suit is to obtain a divorce from the bond of marriage with the defendant, Victor Hecht, on the grounds of adultery. On motion of the complainant, by William B. Reilly, her solicitor, it is, this 4th day of February, A. D. 1908, ordered that the defendant, Victor Hecht, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order of publication be published once a week for three successive weeks in The Washington Law

[Seal] Reporter and The Washington Herald. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 7-3t

**Legal Notices.**

**H. W. Sohn, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Denis J. Stafford, Deceased.**  
**No. 15,004. Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Helen C. Whitton, it is ordered this 18th day of February, A. D. 1908, that James T. Stafford, J. Raymond Stafford, and John Stafford, and all others concerned, appear in said court on Monday, the 16th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 7-3t

[Seal] **Wolf & Cohen, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of Washington, D. C., has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catharina Margaretta Amberger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. **JOHN C. AMBERGER**, by Wolf & Cohen, Attorneys, 700-706 14th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,014. Administration. [Seal.] 7-3t

**James A. Toomey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**In re Estate of Margaret Donohoe, Deceased.**  
**No. 14,448. Administration.**

Upon consideration of the report of James J. O'Connor, executor, filed herein on February 8th, 1908, reporting the sale of part of lot six (6), in square number 51, to Margaret W. Hosier for the sum of two thousand nine hundred dollars (\$2,900.00), net, it is, this 18th day of February, A. D. 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before March 14th, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day [Seal] in The Washington Law Reporter. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Attest: **JAMES TANNER**, Register of Wills. 7-3t

**FOURTH INSERTION.**

[Filed February 8, 1908. J. R. Young, Clerk.]

**C. C. James, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**John M. Herfurth et al., Complainants, v. Unknown Heirs, Devisees, and Alienees of Benjamin Stoddert, John Rochford, Henry Burford, Defendants.** Equity No. 27,575.

The object of this suit is to declare the title to part of lot nine (9), in square five hundred and thirty-eight (538), beginning for the same at a point on south F street twelve (12) feet and six (6) inches from the east line of said lot nine (9) in said square; thence running west twelve (12) feet and six (6) inches; thence north seventy-nine (79) feet and six (6) inches to an alley; thence east twelve (12) feet and six (6) inches; thence south seventy-nine (79) feet six (6) inches to the place of beginning, in the city of Washington, District of Columbia, to be good in fee simple in the complainants by reason of adverse possession thereof for more than twenty-two years. On motion of the complainants, by C. Clinton James, their solicitor, it is, by the court, this 6th day of February, A. D. 1908, ordered that the defendants, the unknown heirs, devisees, and devisees of Benjamin Stoddert, of John Rochford, and of Henry Burford cause their appearances to be entered herein on or before the first rule day occurring three weeks after the first publication of this order, good cause therefor having been shown to the satisfaction of the court; otherwise the case will be proceeded with as in case of default. A copy of this order shall be published once a week for four successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 6-4t

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WASHINGTON, D. C. - - - - - MARCH 6, 1908

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### DECISIONS BY THE COURT OF APPEALS.

#### Contracts—Meeting of Minds—Mutual Mistake.

In *Cunningham Manufacturing Co. v. The Rotograph Co.*, the appellee wrote to appellant offering for sale certain postal cards, the letter erroneously stating the price at \$1 per thousand instead of \$10. Some correspondence was had, without, however, disclosing the error in price quoted, and appellant ordered twenty-five thousand cards, which were shipped by freight and a bill calling for \$10 per thousand mailed. It was claimed by appellant that the goods were received and unpacked prior to receipt of the bill, and it claimed the right to hold the goods for \$1 per thousand, and refused either to pay \$10 for them or to return them. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, holds that there was no meeting of minds of the parties necessary to constitute a contract, and that appellant, by retaining the goods after knowledge of the mistake in price quoted, became liable to make payment at the price stated in the bill, and affirms the judgment.

#### Patent Practice—Dissolution of Interference—Res Adjudicata.

In *U. S. ex rel. Newcomb Motor Co. v. Moore*, Commissioner of Patents, the appeal was from an order dismissing a petition for a writ of mandamus. It appeared that in an interference declared between an application for a patent and a patent previously issued, the primary examiner

held that the applicant had no right to make the claims and dissolved the interference. An appeal from this decision to the board of examiners-in-chief was taken by the applicant but subsequently abandoned; and thereafter, without notice to the patentee, he proceeded ex parte before the primary examiner and action was had resulting in a redeclaration of the interference. The Court of Appeals, in an opinion by Mr. Justice Robb, reverses the judgment dismissing the petition for mandamus. It is held that on the abandonment by the applicant of his appeal from the decision of the primary examiner, that decision became final and binding on the parties, and the question of the right of applicant to make the claims was res adjudicata; and that mandamus would lie to compel the Commissioner of Patents to give effect to that decision and to vacate the subsequent ex parte proceedings.

#### Appealable Orders.

In *Behrens et al. v. Macfarland*, the appeal was from an order denying a motion by parties, whose lands were assessed in proceedings for opening an alley, to vacate an order confirming the verdict of the jury on the ground that the statute under which the proceedings were had was unconstitutional. No appeal was taken by them from the order of confirmation, and the motion to vacate was made after the time within which an appeal could have been taken. The order denying the motion is held not to be appealable, in an opinion by Mr. Chief Justice Shepard, and the appeal dismissed.

#### Seventy-third Rule—Affidavit of Defense Insufficient.

In *Patterson v. Barrie et al.*, the appeal was from a judgment for plaintiff under the 73d Rule of the court below. The action was to recover the purchase price of certain books alleged to have been subscribed for and received by the defendant, and the principal ground of defense was an alleged misrepresentation of the value of the books stated in the affidavit, but not set forth in the pleas. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds the affidavit insufficient and affirms the judgment.

#### Attorney and Client—Quantum Meruit.

In *Blankenship et al. v. Cowling*, the appellants sued to recover for professional services rendered in the matter of the collection of a certain claim. Plaintiffs claimed that defendant had broken his contract by refusing to put up money for costs, and sued to recover on a quantum meruit. The judgment below was for the defendant, and is affirmed by the Court of Appeals in an opinion by Mr. Chief Justice Shepard.

**Cruelty to Animals—Conviction Affirmed.**

In *Johnson v. District of Columbia*, the plaintiff in error was convicted in the Police Court upon informations charging cruelty to animals, in violation of the act of the legislative assembly of this District of August 23, 1871. The validity of the act was questioned on several grounds, but the contentions are denied by the Court of Appeals, and the judgment affirmed in an opinion by Mr. Justice Robb.

**Married Woman—Liability on Purchase of Personal Property.**

In *Dobbins v. Thomas*, the appeal was from a judgment against the appellant, a married woman, in an action to recover for certain personal property sold to her by the plaintiff. The defendant claimed that the transaction was between her husband and the plaintiff, and that she was not liable. The jury found for the plaintiff, for whom judgment was entered, and this judgment is affirmed, in an opinion by Mr. Chief Justice Shepard.

**Plumbing Regulations—Conviction for Violation Reversed.**

In *Garrison v. District of Columbia*, the plaintiffs in error were convicted in the Police Court of having done certain plumbing work without having first obtained a license so to do, or being in the employ of a licensed master plumber. It appeared they were in the employ of a manufacturer of heating apparatus, and as such had connected two short pipes extending between a boiler and tank installed by their employer in a hotel in this city. The Court of Appeals, in an opinion, by Mr. Justice Van Orsdel, reverses the judgment, holding that the work done by defendants was not within the meaning of the statute under which the prosecution was brought.

Opinions in a number of patent cases were also filed.

**Interpleader.**—A bank which has received on deposit checks bearing the indorsement of its customer, upon which the indorsement of the payee is alleged to be forged, is held, in *Rauch v. Ft. Dearborn Nat. Bank (Ill.)*, 11 L.R.A. (N.S.), 545, to have no right, after collecting the amounts from the drawees and being notified by them that suits for the amounts had been instituted against them by the payee, and that it will be required to defend them, and after charging back the amounts to its customer and notifying him to defend the suits, which he refuses to do, but threatens to sue upon his deposit account, to maintain a bill of interpleader against the drawees, payee, and depositor to compel them to settle their rights among themselves, since the respective parties are not claiming from it the same debt, duty, or other thing.

**Court of Appeals of the District of Columbia.**

UNITED STATES OF AMERICA EX REL.  
THE NEWCOMB MOTOR COMPANY, AP-  
PELLANT,

v.

EDWARD B. MOORE, COMMISSIONER OF  
PATENTS.

PATENT PRACTICE; INTERFERENCES; DISSOLUTION;  
RES ADJUDICATA; MANDAMUS.

An interference having been declared between an application for a patent and a patent previously issued, the primary examiner, holding that the applicant had no right to make the claims, granted a motion by the patentee to dissolve the interference. The applicant appealed from this decision to the board of examiners-in-chief, but the appeal was abandoned, and thereafter the applicant proceeded *ex parte* before the primary examiner, without notice to the patentee, and proceedings were had resulting in a declaration of the interference. *Held*, that on the abandonment by the applicant of his appeal from the decision of the primary examiner dissolving the interference, that decision became final and binding upon the parties to the interference; that thereby the question of the right of the applicant to make the claims became *res adjudicata*, and that mandamus would lie to compel the Commissioner of Patents to vacate the subsequent *ex parte* proceedings and to give effect to the said decision of the primary examiner.

No. 1820. Decided March 3, 1908.

APPEAL by relator from a judgment of the Supreme Court of the District of Columbia, at Law No. 48,740, dismissing a petition for a writ of mandamus. Reversed.

Mr. C. H. DUELL, Mr. R. N. KENYON and Mr. W. F. ROGERS for the appellant.

Mr. MELVILLE CHURCH and Mr. F. A. TENNANT for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia dismissing a petition for a writ of mandamus to compel the Commissioner of Patents to enforce a former decision made in the Patent Office and to vacate certain proceedings thereafter had involving what is claimed to be the same subject-matter.

The facts, about which there is no controversy, are these: On July 15, 1902, two patents were regularly issued to E. C. Newcomb, one for an apparatus for generating steam, and the other for the method of generating steam. Both were subsequently assigned to the relator, The Newcomb Motor Company. Newcomb's original application was filed June 7, 1901, and subsequently divided. Prior to this, on August 2, 1897, Elihu Thompson had filed an application for an apparatus for regulating and controlling steam production. No interference was declared between this and Newcomb's applications. After the issue of Newcomb's patents, Thompson inserted in his application forty-seven claims copied from Newcomb's method patent, and demanded an interference. Thereafter, on November 17, 1902, Thompson filed a divisional application setting up the same method claims, and at the same time cancelled said claims in his original application. February 28, 1900, Herman Lemp filed an application for automatic regulation of steam propelled vehicles; and on November 3, 1902, another for the

method of producing steam. Both of these have been assigned to the General Electric Company. December 30, 1902, an interference was declared between Lemp's last application and the Newcomb patent No. 704,908 (method), involving an issue of fifteen counts. These counts consisted of fifteen claims of the Newcomb patent that were not claimed in Lemp's application as filed, but were added thereto after Newcomb's patent had issued. A second interference was declared January 13, 1903, between Lemp's first application and Newcomb's patent No. 704,907. The twenty-one counts of this issue were claims of the Newcomb patent not claimed by Lemp until after the issue of the Newcomb patent. January 13, 1903, an interference was declared between Thompson's divisional application and Newcomb's patent, the forty-seven counts of the issue constituting the claims taken from Newcomb's patent. Another was declared January 27, 1903, between Thompson's original application and Newcomb's patent No. 704,907. The issue in this contained forty-eight counts embracing forty-eight claims of the Newcomb patent not in Thompson's original application, but inserted by him after the issue of the Newcomb patent aforesaid. Thereafter Newcomb filed in each case a motion, under rule 122, to dissolve the interferences. Several grounds were assigned, the substantial one in each case being that the opposing party had no right under his application to make the claims in interference. The primary examiner, to whom the motions were referred under the rule, on January 11, 1904, made a decision in each case that the applicants had no right to make the claims, and thereafter dissolved the interferences. The limit of appeal from each decision was ordered to expire February 4, 1904. Lemp and Thompson filed motions before the primary examiner asking him to cancel the limit of appeal as contrary to law, because they were entitled to a second rejection of their claims; that after proceedings in the interferences be suspended pending the motions; and that they be given thirty days within which to file affidavits regarding the right to make the claims. By stipulation the limit of appeal had been extended sixteen days, namely, to February 20, 1904. On that date the examiner denied the motions. On the same day Lemp and Thompson entered appeals to the examiners-in-chief from the decisions dissolving the interferences, asking that hearings thereof be postponed until a decision by the commissioner on appeals taken directly to the Commissioner from the decisions of the examiner refusing to extend the limit of appeal. On March 11, 1904, the Commissioner affirmed the decisions denying the motions to extend the limit of appeal. September 28, 1904, the Commissioner denied motions for rehearing. Pending the above proceedings, on June 3 and 7, 1904, Thompson and Lemp petitioned the Commissioner to remand their applications to the primary examiner with instructions to reject or allow the same. This petition was denied. On October 5 and 6, 1904, Thompson and Lemp, "in view of the Commissioner's decision" of September 28, 1904, withdrew their several appeals to the examiners-in-chief from the decisions of the primary examiner dissolving the interferences. After the withdrawal of these appeals, Thompson and Lemp proceeded ex parte before the primary examiner—Newcomb having no

knowledge thereof—and demanded action on the same claims, the right to make which had been denied on the motions to dissolve. November 3, 1904, the claims were rejected. Both parties thereafter asked the reconsideration of their several demands and filed affidavits relating to the construction of the applications and claims. Thompson's application was a second time rejected on May 10, 1905, and he appealed in each case to the examiners-in-chief. Lemp pursued the same course, and was a second time rejected on November 20, 1905, and likewise appealed to the examiners-in-chief. On July 13, 1905, on Thompson's ex parte appeal, the examiners-in-chief reversed the primary examiner as to all but two of the claims involved. On Lemp's ex parte appeal they, on January 25, 1906, reversed the primary examiner as to all of the claims involved. After these last two decisions the examiner of interferences reinstated the former interferences, redeclaring them as before, with the exception of the two counts which the examiners-in-chief had held were rightly denied. Before noticing this second declaration Newcomb moved to dissolve on the ground that the subject-matter was res adjudicata. The examiner denied the motions, and Newcomb appealed to the Commissioner. On this appeal the Commissioner, on April 24, 1906, reversed the decision reinstating the interferences, and directed it to be vacated; but also ordered that the primary examiner's decision rejecting the claims be considered in full force and effect until the examiner of interferences should be convinced that the same was an error, or until the same was overruled by an inter partes appeal; and further ordered that the primary examiner should fix a date for reconsideration of the rejection inter partes, and, if still convinced that the rejection was sound, to make the same final and fix a limit of appeal.

On May 23, 1906, Thompson and Lemp each asked that a day be set for the rehearing provided in said decision. Hearing was set for July 9, 1906, and notices were sent to Newcomb, but the same was postponed to September 26, 1906. Meantime the examiner of interferences had on June 11, 1906, set aside the declarations of interferences in obedience to the opinion of the decision of the Commissioner. On August 15, 1906, The Newcomb Motor Company filed the petition setting up the proceedings in the Patent Office before stated, and averring that the only remedy which Thompson and Lemp had in relation to the decisions of the primary examiner dissolving the interferences was by appeal to the examiners-in-chief pursuant to the provisions of sections 4909 and 483, R. S., and the rules of the Patent Office established in accordance therewith; that having taken and then abandoned appeals therefrom, the said decisions of the primary examiner had become final and the issues therein are res adjudicata between the parties, and that by the refusal of the Commissioner to vacate all of the proceedings connected with and leading to a redeclaration of the interferences, and particularly the ex parte actions of the said Thompson and Lemp subsequent to the dissolution of the said interferences, and any and all appeals therein, petitioner had been deprived of the legal rights vested in him by the laws relating to the granting of patents, and will be without redress unless the writ of mandamus prayed for be granted.

It is conceded in the brief of counsel for appel-

lee that "the judgments of the primary examiner, unappealed from, were as final as would have been the judgments of the examiners-in-chief, on appeal, or of the commissioner, on appeal, had appeals been taken to those tribunals," but, it is contended that the judgment of the primary examiner dissolving the interferences on the ground that neither Thompson nor Lemp had the right to make the claims was an interlocutory and not a final judgment, because it did not decide the question of priority. It is true, as contended by appellee, that in several cases decided by this court prior to *Podlesak v. McInnerney*, 28 App. D. C., 299, it was in effect held that in interference cases the right of either party to make the claims of the issue, except under extraordinary circumstances, would not be considered. In the *Podlesak* case, however, upon careful consideration, we modified our earlier views and ruled that inasmuch as the right of a party to make a claim goes to the foundation of an interference a judgment of the primary examiner denying that right might be appealed to this court, and that we would take jurisdiction to determine that question "as an ancillary question to be considered in awarding priority of invention." The opinion states: "If it be incorrectly held that such party has a right to make the claim, priority may be awarded to him, and his adversary be deprived of a substantial right in that he is not given a claim where he necessarily is the prior inventor, his adversary never having made the invention." *Allen v. U. S. ex rel. Lowry*, 26 App. D. C., 8: 33 Wash. Law Rep., 354, relied upon by appellee in no way conflicts with the decision in the *Podlesak* case. Lowry, one of the parties to the interference, was granted a patent and an interference was subsequently declared between his patent and the application of one Spoon. Lowry moved to dissolve the interference upon the ground that Spoon's press was inoperative, and, therefore, that Spoon had no right to make the claims in issue. The primary examiner granted the motion, and an appeal was prosecuted to the examiners-in-chief who affirmed the decision. Spoon thereupon petitioned the Commissioner of Patents, who remanded the case to the primary examiner for further consideration, and that officer, upon the filing of additional affidavits, decided that Spoon had a right to make the claims in issue. An appeal was taken to the board of examiners-in-chief, which was dismissed by that board for the want of jurisdiction. Lowry then petitioned the Commissioner to take jurisdiction of the appeal, which petition was denied. The Supreme Court of the District of Columbia was then petitioned to issue a writ of mandamus commanding the Commissioner of Patents to direct the examiners-in-chief to reinstate and take jurisdiction of the appeal, and the petition was granted. This court on appeal reversed the lower court, and our ruling was affirmed by the Supreme Court of the United States (203 U. S., 476), the ground of both decisions being that appeals are only allowed to the examiners-in-chief, and from them to the Commissioner, from "final decisions, and not such as are made in interlocutory matters." The Supreme Court quoted with approval the following from the decision of the acting Commissioner: "It is to be particularly noted that there has been no decision as to the rival claims of the parties to this interference. It has not been decided which party

is entitled to the patent. If it should at any time be decided that Spoon is entitled to the patent Lowry will have the right of appeal, but until such final decision is rendered the statute gives him no right of appeal. It would seem upon general principles of law that Lowry could then present for determination by his appeal any question which in his opinion vitally affects the question which party is entitled to the patent. The only ground upon which he can reasonably claim the right of appeal on this motion is that the question vitally affects his claimed right to a patent, and, if it does that, he can raise it at final hearing and contest it before the various appellate tribunals, including the Court of Appeals." It is obvious that the decision of the primary examiner in the Lowry case was purely interlocutory, for it eliminated neither party to the interference and deferred final judgment on the question of priority until each party had taken testimony. It was still possible, therefore, for Lowry to prevail on the merits and receive the award of priority. Neither does the case of *Distilling Co. v. Schneider*, 29 App. D. C., 1, conflict with *Podlesak v. McInnerney*, for the reason that the appeal in that case was taken to this court before the subject-matter in dispute had been awarded to either party.

It is further contended that because section 4904, R. S., provides that whenever "in the opinion of the Commissioner" an interference exists, notice shall be given the parties, etc., a non-delegable duty is imposed upon the Commissioner. This question was considered in *Allen v. Lowry*, supra, and it was there held that the Commissioner "for any reason which he considers may be in the interest of the public or the parties," may delegate to the primary examiner the duty of determining primarily whether an interference in fact exists, and that "in so doing, he is not thereby depriving any party of any statutory right to have all questions passed upon at final hearing, and on appeals therefrom, which are necessary for a correct determination of the question of priority, which is the sole question for which interferences are declared." To adopt the view of the appellee would reverse a practice which has prevailed in the Patent Office since the statute was enacted in 1870, and would in effect render the statute nugatory since it would be a physical impossibility for the Commissioner personally to pass upon all these preliminary questions. He was given assistants for that purpose. Moreover, the primary examiner is skilled in the particular art, and, therefore, peculiarly qualified to pass upon a question involving the right of either party to make the claims of the issue. We think the demands of the statute fully met when it is provided that at some stage in the proceedings the personal opinion of the Commissioner may be invoked by either party.

It is next contended by the appellee that the judgment of the primary examiner was not a final judgment because, under the provisions of sections 4909, 4910, and 4911, R. S., the applicant is entitled to a reconsideration and second rejection of his claims by the primary examiner. These sections read as follows:

"Sec. 4909. Every applicant for a patent or for the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the

primary examiner, or of the examiner in charge of interferences in such case, to the board of examiners-in-chief; having once paid the fee for such appeal.

"Sec. 4910. If such party is dissatisfied with the decision of the examiners-in-chief, he may, on payment of the fee prescribed, appeal to the Commissioner in person."

"Sec. 4911. If such party, except a party to an interference, is dissatisfied with the decision of the Commissioner, he may appeal to the Supreme Court of the District of Columbia, sitting in banc."

It will be necessary to examine sections 4903 and 4904, R. S., in discussing the merits of this contention. These sections read as follows:

"Sec. 4903. Whenever, on examination, any claim for a patent is rejected, the Commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, the applicant persists in his claim for a patent, with or without altering his specifications, the Commissioner shall order a re-examination of the case.

"Sec. 4904. Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of priority of invention. And the Commissioner may issue a patent to the party who is adjudged the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners-in-chief, as the case may be, within such time, not less than twenty days, as the Commissioner shall prescribe."

In *Allen v. Lowry*, supra, section 4909 was construed "as though it read, every applicant for a patent, or for the re-issue of a patent, any of the claims of which have been twice rejected, may appeal from the decision of the primary examiner, and every party to an interference may appeal from the decision of the examiner in charge of interferences in such case, to the board of examiners-in-chief. In other words, to abbreviate and make the section more succinct, the words 'may appeal from the decision' were used but once, but we think that thereby clearness was sacrificed for brevity." This interpretation negatives the contention of appellee that the provision giving an applicant the right to have his claim twice rejected applies in inter partes cases. In an ex parte case arising under section 4903 the applicant in the first instance has no knowledge as to the references and reasons of the rejection by the primary examiner of his claim, and has no opportunity to be heard before action has been taken by that official. The notice of rejection contains his first information of what has taken place in the Patent Office. The statute, therefore, very properly provides in effect that upon the receipt of such notice the applicant may have an opportunity to meet the objections raised by the primary examiner. Under section 4904, however, it is made the duty of the Commissioner to give notice to parties thought to be in interference,

and to "direct the primary examiner to proceed to determine the question of priority of invention." The statute, therefore, imposes upon the Commissioner the duty of notifying the parties prior to the first hearing before the primary examiner so that, when the hearing is had, both parties have a right to be present, and, in the event a motion for dissolution is made, the applicant affected has knowledge of the grounds for the motion and ample opportunity for hearing and argument. No more reason exists for a second hearing than exists for a second hearing in any other case between two parties litigant where due notice has been given and all the forms and requirements of the law have been complied with. The Commissioner in his opinion said: "I am of the opinion that the proceedings in the Thompson application since the withdrawal of the appeal to the examiners-in-chief in the interference were contrary to the evident spirit of the rules, and that to sustain such proceedings would be in opposition to the requirements of good practice and to the interests of applicants generally. If parties can waive their rights of inter partes appeal in the interference and then proceed by ex parte appeals to try the same questions which they could have tried by the inter partes appeals, the provision of Rule 124, that appeals shall be heard inter partes is rendered ineffective. If the inter partes hearing upon appeal is to be escaped, the usefulness of motions for dissolution will be slight except in those cases where parties voluntarily take the inter partes appeal. Why should motions be brought or even permitted if decisions granting them can be set aside upon appeal without opportunity for the moving parties to be heard and presumably to a large extent without consideration of the arguments upon which the conclusions appealed from are based? It is no sufficient answer to say that if the decision of the primary examiner is reversed, the motion may be brought again when the interference is reinstated or reddeclared; if reinstated, a new motion brought and granted would presumably be followed by another ex parte appeal and another reversal of the decision. There would be no logical conclusion to such proceedings and to permit them would be absurd. The practice of permitting motions for dissolution to be brought is believed to be good. If appeals upon these motions are to be permitted, the prosecution thereof must be inter partes to save the whole proceedings upon the motion from becoming farcical. The rules at present do provide for appeals and it is not deemed expedient to change them in this respect at the present time."

We conclude, therefore, that the provisions relating to ex parte applications do not apply to inter partes actions, and that when the appeal from the decision of the primary examiner was abandoned, his decision became final and binding upon the parties.

But it is insisted that mandamus is not the proper remedy. When the decision of the primary examiner that Thompson and Lemp had no right to make the claims in issue became final and res adjudicata, those parties were eliminated from the case, and appellant was entitled to go hence in the full and uninterrupted enjoyment of the patent. Under the statute the jurisdiction of the Commissioner attaches when he directs the declaration of an interference, and he still retains juris-

diction to award priority to the successful party after his adversary has been eliminated. It would, indeed, be an anomalous situation, if his determination that one party to an interference has no right to make the claims in issue, and, therefore, is not entitled to a judgment of priority, operates to deprive him of jurisdiction to award priority to the other party who has the right to make the claims in issue, and who is entitled to an award of priority. The remedy of the defeated party is by way of appeal. He has no right whatever thereafter to prosecute the claims of the issue in an *ex parte* case. It follows, therefore, that when Thompson and Lemp abandoned their appeals from the decision of the primary examiner denying their right to make the claims in issue, that decision became final and res adjudicata as between the parties to the interference, and that thereafter the Commissioner was without authority to direct the primary examiner to readjudicate in Thompson's and Lemp's *ex parte* applications, the question whether they had the right to make the identical claims of the issue in the interference proceeding. If this remedy is denied it, appellant will be again compelled to litigate with Thompson and Lemp in the Patent Office the same question which we have held has already been finally determined in its favor. All this will involve expense, delay, and loss. The Commissioner, being without authority to direct a readjudication of the question involved in the former interference, has no discretion in the premises, for "whether the former decision was right or wrong, or was induced by the want of the particular evidence that was offered in the present case, is not the question. However that might be, it was final and put an end to the litigation in the first interference." *Blackford v. Wilder*, 28 App. D. C., 551.

It is no answer to the petition of appellant that the Commissioner deemed himself possessed of the authority he exercised, if no discretion in the premises was committed to him and he was in fact acting beyond his authority and without warrant of law. *Garfield v. U. S. ex rel. Frost*, 35 Wash. Law Rep., 771; *U. S. ex rel. Daly v. Macfarland*, 28 App. D. C., 552; 35 Wash. Law Rep., 81. *Seymore v. Brodie*, 10 App. D. C., 567; 25 Wash. Law Rep., 253, confidently relied upon by appellee to defeat appellant's right to the writ, is not in point. That case, like this, involved an interference between an application and unexpired patent, but in that case the decision dissolving the interference had been acquiesced in by the junior party, leaving the senior party in full possession and enjoyment of his patent. This court very naturally held that the patentee was not entitled to a writ of mandamus to compel the Commissioner of Patents to reinstate the interference proceeding because he had suffered no legal injury whatever and because he remained "in full possession of all his legal rights to the same extent as before he was summoned to defend those rights."

In the instant case a second attack not authorized by law has been instituted against appellant's patent, and necessarily has impaired that patent. There being no other adequate and speedy remedy, we think appellant entitled to the relief sought.

The judgment of the court below must be reversed, and the cause remanded to that court with directions to issue the writ as prayed. Reversed.

## Court of Appeals of the District of Columbia.

FREDERICH W. BEHRENS ET AL., APPELLANTS,

v.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

### APPEALABLE ORDERS.

Where, in proceedings for the opening of an alley, no appeal was taken by parties whose lands were assessed from the order confirming the verdict of the jury, but subsequently, after the time within which an appeal might have been taken had expired, such parties filed a motion to vacate the order confirming the verdict on the ground that the statute under which the proceedings were had was unconstitutional, held that the order denying the motion to vacate was not appealable, and the appeal dismissed.

No. 1814. Decided March 8, 1906.

APPEAL from an order of the Supreme Court of the District of Columbia, holding a District Court, District Court No. 708, denying a motion to vacate a judgment confirming the verdict of a jury in proceedings for opening an alley. Dismissed.

Mr. WM. C. PRENTISS for the appellants.

Mr. E. H. THOMAS and Mr. JAMES F. SMITH for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District denying a motion to vacate a judgment confirming the verdict of a jury assessing damages and benefits accruing from the opening of an alley.

The appellees, as Commissioners of the District of Columbia, filed a petition in said court on December 21, 1906, for the purpose of securing the opening of an alley through squares 2688 and 2669, in the city of Washington. Notice was given by publication, as ordered, in three newspapers, and personally served also upon such of the owners of the land to be condemned, as could be found in the District. On January 15, 1907, a jury was regularly empaneled to assess the damages due to the owners of the land taken, and the benefits accruing therefrom to the owners of lots in the said squares confronting the same which would be benefited by opening said alley. On February 8, 1907, the jury returned a verdict in which they assessed the damages in the sum of \$3,348.02. They also found that the amount of benefits accruing to other lots in said squares was \$3,540.78, which equalled the damages and the cost of the proceeding. A detailed statement was made a part of the verdict showing each lot found to be benefited, the name of the owner, and the amount of the benefit received. In this statement appear certain lots owned by the appellants.

No exceptions having been filed to the verdict, it was confirmed on March 26, 1907.

On May 31, 1907, the appellants, eleven in number and each owning one of the lots against which benefits had been assessed, filed a motion to vacate the order confirming the verdict on the ground that the statute under which the proceeding had been maintained was unconstitutional.



From the order denying this motion, this appeal has been prosecuted.

It is contended on behalf of the appellees that the order denying the motion is not an appealable one, and can not therefore be reviewed. As the appellants were parties to the proceeding and included in the order confirming the verdict, they might have appealed therefrom at any time within the period provided for the prosecution of appeals. This, for some unknown reason, they failed to do, and fled their motion to vacate after the time for taking an appeal from the original order had elapsed; and their appeal is from the order denying their motion. The objection is well taken. *Tubman v. Railroad Co.*, 20 App. D. C., 541, 543; *Babbington v. Washington Brewery Co.*, 13 App. D. C., 527, 533; 27 Wash. Law Rep., 22; *Meyers v. Davis*, 13 App. D. C., 361, 364; 26 Wash. Law Rep., 710; *Magruder v. Schley*, 17 App. D. C., 227, 229; 28 Wash. Law Rep., 870; *D. C. v. Prospect Cemetery*, 6 App. D. C., 497, 511; 23 Wash. Law Rep., 162.

For the reasons given the appeal will be dismissed with costs. Dismissed.

## Supreme Court of the District of Columbia.

THE LAS OVAS COMPANY, A CORPORATION,  
v.  
NORMAN H. DAVIS AND CHARLES T. PHILLIPS.

CORPORATIONS; DIRECTORS; NOTICE OF MEETINGS; WAIVER; SUITS BY CORPORATIONS; PARTIES; PROMOTERS; SECRET PROFITS.

1. While a director of a corporation can not legally delegate his powers and duties as a director, written authority from him to a third person to represent him at the meetings of the board held a waiver of notice of the meeting, and to estop him to allege, as to any action of the board had in his absence, that he had no notice of the meeting.
2. The president of a corporation who is, by the by-laws, its chief executive officer, may direct the institution of a suit for the benefit of the company even without a resolution of the board of directors authorizing it.
3. A plaintiff having a joint and several demand against several persons may proceed in equity against one or more of such persons.
4. The promoters of a corporation stand in a fiduciary relation to it, and are bound to make a full and fair disclosure of their interest in the property sought to be transferred to the corporation.
5. In a suit by a corporation against certain of its promoters to recover alleged secret profits, it appeared that defendants secured an option to purchase certain property at \$20,000, and thereafter, in co-operation with other persons, organized the plaintiff corporation to purchase the same property at \$35,000, the fact of their agreement with the owner to purchase at the option price being concealed. A written agreement was entered into with those whom they had secured as their associates in the corporation wherein it was made to appear that the cost of the property was \$35,000, and that the only profit of the promoters was 40 per cent of the capital stock of \$150,000. It was held—

(1) That defendants should account for the portion of the secret cash profit received, said profit being the difference between the price paid by them for the land and the price at which it was sold to the corporation, less such amounts, if any, as they may have necessarily paid out in securing said land or in forming the corporation.

(2) That plaintiff may follow such secret cash profits in so far as they went into the stock of the corporation, or may have a money judgment therefor as it may elect; and if its election be to follow

said profits into said shares the latter should be surrendered and cancelled.

(3) That defendants would not be required to surrender the shares of stock received by them as their proportion of the 40 per cent of the capital stock received as "promoters' stock."

Equity No. 28,621. Decided January 2, 1905.

HEARING on a bill in equity for an accounting, etc. Decree for complainant.

Mr. J. J. DARLINGTON for the complainant.

Mr. S. A. PUTMAN and Mr. J. K. M. NORTON for the defendants.

Mr. Justice GOULD delivered the opinion of the Court:

The bill in this case, filed by the Las Ovas Company, a corporation under the laws of the State of Virginia, seeks to recover from the defendants, Davis and Phillips, certain secret profits made by them in connection with the purchase of land by said corporation and to compel the surrender by Davis of certain stock in said corporation which he acquired in the promotion of the enterprise.

It is unnecessary to set out in extenso the bill or the answers of the two defendants. The following facts are established by the testimony: In the latter part of December, 1903, or early in January, 1904, the defendants, Davis and Phillips, secured an option on about four thousand acres of land in Cuba belonging to Madam Acosta, who was the widow of one Tarafa, for \$10,000. The defendants were at that time residents of Cuba. In December, 1903, Davis and Phillips met Mr. Benjamin Micou in Havana and told him of this property. Davis, Phillips, and Micou met in Washington in January, 1904. Through the latter the defendants were introduced to General Ried. The latter became interested in the land project, and, as a result of negotiations between the parties, an understanding was reached which was embodied in a memorandum of agreement between the parties early in February, 1904. The substance of this agreement is that a corporation was to be organized for which Messrs. Phillips and Davis and Messrs. Herbert and Micou were to acquire the tract of land of four thousand acres already referred to for the sum of \$25,000 and 40 per cent of the stock of the company, the said company to have a capital stock of \$150,000, 40 per cent of which, or \$60,000, in stock was to be given to Phillips and Davis and Herbert and Micou as compensation for securing the land and the preliminary work of getting up and incorporating the company afterwards to be organized. The remainder of the \$150,000 of stock, viz, \$90,000, was to be disposed of to the subscribers thereto for one-third of its face value of \$30,000, \$25,000 of this money to go to the purchase of the land, and \$5,000 to be used as an expense fund as directed by the company for the purpose of effecting sales of the lots into which the four thousand acres should be divided. This \$90,000 worth of stock was to be taken by the subscribers at one-third of its face value upon the following terms: one-half payable down and the other half payable if necessary at the end of twelve months from the date of subscription.

Prior to entering into this agreement, and on the 4th day of February, 1904, Davis, Phillips, and Herbert & Micou, acting through Mr. Micou, had entered into an agreement as follows:

"Whereas, there is now under consideration the organization of a corporation to acquire, develop, and dispose of land in Cuba for orange

growing and other purposes, and the parties to this agreement who purpose being stockholders in said corporation, have agreed, or will agree with the other proposed stockholders of said corporation to acquire for and to deliver to the corporation when organized, for \$25,000 some four thousand acres of land, part of what is known as the Las Ovas tract in Pinas del Rio Province, Cuba; and, whereas, Charles T. Phillips and Norman H. Davis have an option on this land for \$15,000, it is hereby agreed between Charles T. Phillips and Norman H. Davis as parties of the first part, and H. A. Herbert and Benj. Micou, under the firm name of Herbert & Micou, as parties of the second part, that any sum in excess of \$15,000 paid for this land by the corporation or the subscribers to its capital stock shall be divided as follows: Two-thirds to be divided between the two parties of the first part and one-third to go to the parties of the second part. Should the parties to this contract take stock in the corporation instead of money for the whole or any part of the excess over \$15,000 to be paid by the corporation for this land, then that such stock is likewise to be divided two-thirds between the parties of the first part and one-third to the parties of the second part. Agreed upon this 5th day of February, 1904.

NORMAN H. DAVIS.

CHAS. T. PHILLIPS.

HERBERT & MICOU.

By BENJ. MICOU."

Subsequently, General Ried went to Cuba, made an examination of the property in connection with the defendants and the determination was reached to increase the amount of land to be purchased; and another agreement dated at Havana on March 19, 1904, was signed by Phillips, Davis, Ried and Herbert & Micou, partners, by Benjamin Micou. This recites that the parties last named agree to purchase a tract of land in Cuba containing five thousand acres, more or less, the property of the widow Tarafa; that they will acquire this tract of land for the formation of a company to be organized, for the sum of \$34,000, half cash; and the other half in twelve months, and 40 per cent of the stock of the company to be formed. The company is to have a capital stock of \$150,000, 40 per cent of which, or \$60,000 worth of stock, is to be divided equally between signers of this contract, i. e., Ried to have \$15,000, Herbert & Micou \$15,000, Davis \$15,000, and Phillips the same amount; the remainder of the \$150,000 of stock to be subscribed for by the persons signing the agreement in proportion to the amount of shares subscribed.

The testimony further shows that this last-named agreement was subsequently modified by adding additional land to be purchased from the widow Tarafa at an increased price of \$1,000, making the total purchase price at which the land was turned in to the company \$35,000.

There is no dispute in the testimony that while the original option which had been obtained by the defendants Davis and Phillips had been canceled, they had, at the time this last agreement was entered into, made a contract for the purchase of the property from the widow Tarafa for the sum of \$20,000. There is also no contest in the evidence upon the proposition that the transaction was closed upon this basis, namely, a sale by the widow Tarafa to the defendants Phillips and Davis for the sum of \$20,000 and a resale to

the company for the sum of \$35,000. This was accomplished in the following manner: The widow Tarafa conveyed the property to one Escalante, who was an employee of the defendants Phillips and Davis, or at least one of them, the deed to him reciting a consideration of \$20,000. The latter in turn made a deed to Mr. Micou, the deed reciting a consideration of \$35,000, and Mr. Micou subsequently transferred the property to the company for the same consideration. It does not admit of discussion from the testimony that the fact that Phillips and Davis had obtained the property for one price and turned it over to the company for another was unknown to General Ried, who furnished substantially all the money for the cash payment upon the property, through his contribution to the capital stock of the company, until some months later, when, in Cuba, he examined the deeds and found the discrepancy in the considerations. It is unnecessary to set out in detail the means used by Phillips and Davis to conceal this fact from General Ried. Neither denies in his testimony that he did not intend to reveal this fact to General Ried or to the plaintiff.

Two objections were urged by the defendants to the maintenance of the suit, which will be disposed of before deciding the principal questions involved. The first is, that the suit was instituted without authority from the plaintiff corporation. It appears from the record that by the by-laws of plaintiff, its president is authorized to "perform all . . . duties incident to the position of chief executive officer of the company." It further appears that at a meeting of the board of directors of plaintiff, held Thursday, June 28, 1905, Hilary A. Herbert, its president, being present, a resolution was unanimously adopted directing the secretary and treasurer to employ counsel to take action with reference to the subject-matter of this litigation. All of the directors were present at this meeting excepting Conrad Ried (the son of the principal shareholder of the company) and the defendant Davis. It is objected that this meeting was irregularly called for the reason that it was a special meeting of the board and that Davis had no notice of it. But it appears that Davis was at the time in Cuba, and that before leaving Washington he had, under date of January 28, 1905, given George C. Ried authority to represent him at the meetings of the board. While it is true that a director can not legally delegate his powers and duties as director, this written instrument was surely a waiver of notice on Davis' part. Under the circumstances he was estopped to allege, as to any action of the board taken in his absence, that he had no notice of the meeting. There is, moreover, another reason for sustaining the authority to bring the suit. By the by-laws, heretofore quoted, the president of the company was its chief executive officer. He was present at the meeting and voted for the resolution authorizing the institution of the suit. He could have directed it without the intervention of the board. "Managing officers and agents of corporations have power to employ attorneys and counselors to prosecute or defend suits for the corporation, or otherwise to assist in legal proceedings in which it is interested, without any express delegation of power so to do, or any formal resolution of the board of directors to that effect." 10 Cyc., p. 928, note 8, b, and cases cited.

It was next objected that the uncontradicted

evidence disclosed a defect of parties in that Mr. Micou, or the partnership of Herbert & Micou, should have been joined as defendants. This contention was based upon the written contract of February 4, 1904, between the defendants and Herbert & Micou whereby the latter acquired a one-third interest in the secret profits of the promoters. Undoubtedly Herbert & Micou would have been proper parties defendant, and, under the equity practice as it existed in England prior to the adoption of the 32d order of August, 1841, would have been necessary parties. This order, however, which is substantially Rule 51 of the rules of practice adopted by the Supreme Court for the courts of equity of the United States, renders it possible for a plaintiff who has a joint and several demand against several persons, to proceed against one or more of the persons severally liable. What may be the result to the plaintiff in electing to pursue his several remedy against the defendants is a matter for subsequent consideration.

The first of the principal questions raised by the record is: Are the defendants liable to the plaintiff for the undisclosed profits, which they made in the transaction wherein the land in question was sold to their nominee for \$20,000 and turned over to the plaintiff for \$35,000? The facts in relation to the transaction, as heretofore stated, do not admit of controversy. The defendants secured the option to purchase the property from the owner at \$20,000; they thereupon cooperated with those who, with themselves, became the stockholders of plaintiff, to purchase the same property at \$35,000; carefully concealing their agreement with the owner to sell at the former figure. They entered into a written instrument with those whom they had secured as their associates in the corporation whereby it was made to appear that the cost of the property was \$35,000, and that the profit of those who were the promoters was to be 40 per cent of the capital stock, and nothing more. The case differs in no respect from the celebrated English case of *Erlanger v. New Sombrero Phosphate Co.*, 3 App. Cases, 1218, wherein it appeared that a syndicate purchased the lease of an island containing phosphate and then organized a corporation to purchase the lease, obtaining from it twice the amount paid for it, and it was held that the syndicate, being the promoters of the corporation, stood in a fiduciary relation to it and were found to make a full and fair disclosure of their interest in the property. In truth, the case under consideration is stronger than the English case, because here the defendants had not in fact purchased the property with a view to reselling it; nor had they paid anything for an option on it; but the very money which they used to pay the owner for his conveyance to their strawman was the money of those whom they had interested in the corporation to be formed, who supposed they were paying their funds as a part of the purchase price for a conveyance from said owner of the corporation.

It is an undoubted rule of law that when two or more persons associate themselves for the purpose of purchasing property, and one of them represents to the others that particular property can be bought for a designated price, which he procures to be paid by his associates, when in fact he receives a difference between said sum and a less one, he may be compelled to account for

such difference without any rescission of the contract, and although the property may be worth all or more than was paid for it. *Emery v. Parrott*, 107 Mass., 95.

The same principle is applied against promoters of corporations, in case of any secret contract more favorable than that disclosed. *Brewster v. Hatch*, 122 N. Y., 349; *Pittsburg Mining Co. v. Spooner*, 74 Wis., 307; *Hebgen v. Koeffler*, 97 Wis., 313; *South Joplin Land Co. v. Case*, 104 Mo., 572; *Ex-Mission Land and Water Co. v. Flash*, 97 Cal., 610; *Burbank v. Dennis*, 101 Cal., 90; *Yale Gas Stove Co. v. Wilcox*, 64 Conn., 101; 25 L. R. A., 725; *Densmore Oil Co. v. Densmore*, 64 Pa., 3; *Haywood v. Leeson*, 176 Mass., 310; 49 L. R. A., 725.; *Yeiser v. U. S. Board and Paper Co.*, 107 Fed., 340; 52 L. R. A., 724.

As stated in one case, it is the duty of a promoter toward those who are invited to cooperate in the enterprise not only to abstain from stating as a fact that which is not so, but not to omit to state any fact within his knowledge, the existence of which might in any form affect the extent or the quality of the advantages held out as an inducement. *Cortes Co. v. Thannhauser*, 45 Fed., 730.

The principles laid down in these cases establish the liability of the defendants to account to the plaintiff for the undisclosed profits which each received in this transaction. And inasmuch as it appears from the testimony that these profits were at least in part invested in the stock of plaintiff, under the decision in the case of *Yeiser vs. U. S. Board & Paper Co.*, supra, it would appear equitable that to the extent that such illegal profits entered into the purchase of said stock, the latter should be turned in and canceled by the company.

It is next urged on behalf of plaintiff that the stock issued to plaintiff as "promoters'" stock, viz, the \$15,000, which each received as part of the \$60,000 stock issued in part payment for the land purchased, should also be canceled, on the theory that defendants were trustees and acted in bad faith as such, and hence are not entitled to these shares of stock, although their participation in this profit was fully disclosed in the preliminary agreement and subscription signed by all the subscribers. The theory upon which this claim is based is that laid down by the Supreme Court in *Barney v. Saunders*, 16 How., 535; 14 L. ed., 1047, and *Walker v. Beall*, 9 Wall., 743, 19 L. ed., 814; viz: That where trustees have acted dishonorably or fraudulently it would be inexpedient to allow them the same compensation as if they had acted uprightly and in good faith. Before deciding as to whether this principle is applicable to the facts of this case, it will be helpful to review the circumstances attending the issue, and the present holding, of this stock. At the time the final agreement and subscription was made, March 19, 1904, the understanding was that Phillips, Davis, Ried, and Herbert & Micou (partners) were to turn over the land to the company for \$34,000 (subsequently increased to \$35,000) and 40 per cent of the stock of the corporation, i. e., \$60,000, which stock was to be divided between them in four equal parts. In this respect, all these parties were "promoters" and the stock taken by each was "promoters'" stock, and a profit to each for services in launching the enterprise. The fact that it was not an

undisclosed or secret profit differentiates it from the transaction which has already been discussed. It was known and agreed by all the original parties to the transaction and was set forth in the prospectus, or subscription agreement. The shares which the defendants received were not as a commission for the services in securing the land for the corporation; at least, there is no evidence to that effect, and there is certainly no inference that such was the fact because the share of Ried, who had done nothing procuring or discovering the property was equal to that of each of the defendants. It does not seem to come within the description of a commission to the defendants for services rendered in securing the land. Nor is it true, in the full sense of the term, that promoters are trustees of the corporation to be formed. As stated by Judge Thompson in his work on Corporations, par. 8284: "The fact that a promoter may purchase with his own money, property with the intention of selling it to the corporation at a profit, does not make the property that of the corporation in equity; in other words, he does not hold as trustee for the corporation. It is his property; but when he undertakes to sell it to the corporation, he is charged, as its fiduciary, with the duty of making a full and fair disclosure of what he gave for it." And in paragraph 8287, it is stated: "As in the case of directors, the thing which the rule condemns is the taking of *secret* profits by the promoter from the corporation which he promotes. It does not inhibit the taking of *open* profits." In the case of McElhenny's Appeal, 61 Pa. St., 188, which was a case in which a promoter was charged with secret profits, the court uses this language: "It is not damages in a case like this that equity gives, it is restoration of the thing wrongfully taken, namely, the money received, or an equal sum and interest."

Moreover, in all the cases which I have examined, in which promoters have been compelled to disgorge secret profits, they have been given credit for all legitimate and necessary expenses incurred by them in securing the property for the company or in organizing the corporation. See *Haywood v. Leeson*, supra. In the well-known case of the *Emma Silver Mining Co. v. Grant*, 11 Law Reports Ch. Div., 918, where Grant was held liable for the amount of secret profits which he had made, it was also held that in estimating the amount of such profit he was entitled to be allowed all sums bona fide expended in securing the services of the directors and providing their qualifications, and in payments to brokers and officers of the company and to the public press in relation to the company. These rulings negative the idea that the court, in compelling the promoter to surrender secret profits, has the right to penalize or fine him for his misconduct, which would be the result of forcing him to surrender stock or money legitimately received in connection with the transaction.

It should also be remembered that all of the present stockholders of plaintiff, who hold their stock by reason of subscription to the company, took with full knowledge of defendants' title to this "promoters'" stock. These stockholders are as follows: General Geo. C. Ried; seventy-six shares (one each being held by Kane and Conrad Ried); Hilary A. Herbert, nine shares; Davis, forty shares; Dr. Sowers, six shares; and ten shares in the treasury. It, therefore, appears that all

the present stockholders (excepting Dr. Sowers, who, according to the testimony, purchased through Davis' individual misrepresentations) were participants with defendants in the division of this \$60,000 of promoters' stock. It does not appear equitable that these shareholders should retain their gratuitous stock and that defendants should surrender theirs, simply because defendants made an additional and undisclosed profit above that which their associates made in the transaction. It seems to me that the demands of equity, under all the circumstances, will be subserved by requiring defendants to surrender their secret profits not participated in by their associates.

The conclusions reached may be summed up as follows:

1st. The defendants shall severally account for that portion of the secret cash profit which each received, said profit being the difference between the amount paid to the widow Acosta and that paid by plaintiff for the land in question, with interest from the date of the receipt of such profit, less such amounts, if any, as each may have necessarily paid out in securing said land, or in forming such corporation.

2d. The plaintiff may follow said amounts so received, in so far as they went into the stock of said company, or may have a money judgment therefor as it may elect. If the election is to follow said profits into said shares the latter shall be delivered up and canceled.

3d. The defendants will not be required to surrender up for cancellation the shares of stock which it received under the written prospectus or subscription agreement as "promoters'" stock.

4th. The cause will be referred to the auditor to ascertain the net amount of secret profits received by each defendant, and the proportion thereof which was invested in the stock of plaintiff now held by either of them.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Edward S. McCalmont, Attorney  
In the Supreme Court of the District of Columbia.

Julius G. Jackson v. Francis Duffy Jackson.

Equity, No. 27,553.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 14th day of February, 1908, ordered that the defendant, Francis Duffy Jackson, and the codefendant, Richard Smallwall, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: ASHLEY M. GOULD, Justice. A true

copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-31

**Legal Notices.****W. K. Quinter, Solicitor****In the Supreme Court of the District of Columbia.****William K. Quinter, Trustee, Complainant, v. Charles H. Swan, Trustee, et al., Defendants.****No. 27,680. Equity Doc. 61.**

The object of this suit is to establish title in the complainant by adverse possession to part of original lot 4, in square 290, in the city of Washington, District of Columbia, beginning for the same on the north side of E street, 33.09 feet east from the southwest corner of said lot, the same being the southwest corner of the brick building erected on the eastern portion of said lot, and running thence northerly along the western face of the wall of said building 55.73 feet; thence west .23 of a foot; thence north with the face of said wall 31.91 feet; thence east 4.89 feet to the center of a 13-inch wall; thence north with the center of said brick wall 70.36 feet to the rear line of original lot 4; thence west along said rear line 22.50 feet more or less to the east line of the alley running north and south; thence south with the line of said alley 70.50 feet; thence west 14.333 feet to the west line of original lot 4; thence south with the west line of said lot 88.50 feet to the southwest corner of said lot; and thence east 33.09 feet to the place of beginning, according to the survey made by the surveyor of the District of Columbia, on the 8d day of December, 1907. On motion of the complainant, it is, this 4th day of March, A. D. 1908, ordered that the defendants, New England Hospital for Women and Children, a Corporation; John L. Barnard, Mary C. E. Barnard, Caroline A. Sayward, and William W. Swan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for

[Seal.] three successive weeks in The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Kappler & Merillat and Wolf & Rosenberg, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Sitting in Equity.**

**James Lansburgh et al., Complainants, v. Myron M. Parker et al., Defendants. Eq., No. 27,067.**

The object of this suit is for an accounting of the affairs of the Marshall Brown Syndicate, removal of Myron M. Parker, surviving trustee of said syndicate, for discovery, for an injunction against Myron M. Parker, Elizabeth C. Norton, executrix of Elizabeth C. Norton, Mary C. Norton, Hattie Norton Lee, and John Dudley Norton, heirs at law of John D. Norton, deceased, and William W. Hannon, from disposing of their interest in said syndicate, and Myron M. Parker and Lillie Parker, his wife, from disposing of interests in property mentioned in this suit, and to cancel the interests of said syndicate held by Myron M. Parker, Elizabeth C. Norton, executrix, Elizabeth C. Norton, Mary C. Norton, Hattie Norton Lee, and John Dudley Norton, heirs at law of John D. Norton and William W. Hannon. On motion of the complainant it is this 4th day of March, A. D. 1908, ordered that the defendants, J. Donald Cameron, John W. Morris, Virginia Danziger, and William Hyams, executors of the estate of Max Danziger, deceased; Hattie Norton Lee, John Dudley Norton, and Mary C. Norton, heirs at law of John D. Norton, deceased; L. C. Stanley, Augustus White, Alfred L. White, James H. Sweeney, Charles Gans and William Gans, trading as Gans Brothers, Mary E. Wright, heir at law of M. B. Wright, James T. Shaw, John B. Falck, Horace F. Flak, Mary B. Washington, John S. Sullivan, and George P. B. Jackson, executors and trustees of the estate of George G. Vest, Sol Haas, Lillie M. Muehlhaus, Florence A. Patterson, Philip H. McMillan, John H. Patterson, Harriet P. Sanders, and the Cananea Realty Company, a corporation, and each of them, cause their and each of their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this notice be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington

[Seal.] Herald before said day. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 10-St

**Legal Notices.****L. M. King, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Robert E. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of February, 1908. JOHN F. RHINES, 600 2d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,994. Admn. [Seal.] 10-St

**In the Supreme Court of the District of Columbia.**  
**Gertie Kendrick, Complainant, v. Josiah Kendrick, Defendant. No. 25,710. Equity Docket No. 67.**

The object of this suit is to annul the marriage of Gertie Kendrick and Josiah Kendrick. On motion of the plaintiff it is this 2d day of March, A. D. 1908, ordered that the defendant, Josiah Kendrick, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-St

**Maddox & Gately, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**In the Matter of Farmers' Trust, Banking and Deposit Company of Baltimore, Maryland.**

**Equity, No. 27,402.**

Upon consideration of the petition of R. Harrison Johnson, surviving receiver, and the accompanying affidavits herein this day filed, it is, this 4th day of March, 1908, ordered that said surviving receiver be, and he is hereby, authorized to sell to Samuel J. Henry lot numbered 23 in block numbered 21, Brookland, D. C., at and for the sum of two thousand six hundred (2,600) dollars in cash, subject to a broker's commission of three (3) per cent, taxes, assessments, rents, water rents, and insurance to be paid to the day of sale; that said sale so made shall be finally ratified and confirmed unless cause to the contrary be shown on or before the 25th day of March, 1908. Provided a copy of this order be published in The Washington Law Reporter once

a week for three successive weeks prior to said [Seal.] last mentioned date. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 10-St

**Fulton Lewis, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin P. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of March, 1908. MARIA J. S. DAVIS, 1503 Irving st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,068. Administration. [Seal.] 10-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry P. Sanders, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of March, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, By Fred'k Eichelberger, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,955. Administration. [Seal.] 10-1

**Walter C. Clephane, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. Chase, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of March, 1908. **GRANT F. CHASE**, 172 Washington st., Binghamton, N. Y.; **MARY E. C. WALKER**, 1125 11th st. N. W., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,019. Administration. [Seal.] 10-31

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of B. Frank Fry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of March, 1908. **NINA C. FRY**, 1843 N. Capitol st. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,091. Administration. [Seal.] 10-31

**H. Winship Wheatley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph I. Maguire, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of March, 1908. **CHARLES E. BOONE**, No. 114th st. S. E.; **WM. J. KERBY**, 2409 1st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,992. Administration. [Seal.] 10-31

**Joseph A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Catherine Neitz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of March, 1908. **CHARLES O. BRILL**, Villa Flora Club. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,334. Administration. [Seal.] 10-31

**Legal Notices.**

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Sarah Malone, Deceased.**  
**No. 14,908. Administration Docket 37.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sadie E. Williams, it is ordered this 5th day of March, A. D. 1908, that Oliver Clapham, and all others concerned, appear in said court on Tuesday, the 7th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **HARRY M. CLABAUGH**, Chief Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**T. L. Jeffords, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Laura L. Dodge, Deceased.**  
**No. 15,049. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Laura L. Paul, it is ordered this 3d day of March, A. D. 1908, that Samuel S. Pentz, Joseph Pentz, Annie L. Dean, Jennie Pentz, Samuel E. Pentz, John F. Pentz, William H. Pentz, Edith Pentz, Annie L. Young, Laura C. Blunt, Esther M. Haddaway, James M. Pentz, Charles E. Pentz and Edwin C. Pentz, and all others concerned, appear in said court on Friday, the 17th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD**, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**Gordon & Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Amelia C. Travers et al. v. John H. Travers et al.**  
**Equity, No. 21,484.**

The trustees herein having reported an offer from Robert H. Baum and William B. Brown to purchase part of lot 5 in square 379 in the city of Washington, D. C., as shown by plat annexed to said report, and improved by Nos. 927 and 929 Pennsylvania avenue northwest, for the sum of \$81,412, payable \$10,000 in cash and balance secured by first deed of trust on the property and payable as in said report set forth; subject to the payment from the purchase money of a broker's commission of 8 per cent. It is, by the court, this 3d day of March, A. D. 1908, ordered and decreed that said offer be accepted and that sale by the trustees on the terms set forth in said offer be ratified and confirmed, unless cause to the contrary be shown or before the 3d day of April, 1908. Provided this order be published in The Washington Law Reporter and The Evening Star, once a week for three successive weeks prior to said last-mentioned date.

[Seal] **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 10-31

**McNeill & McNeill, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Charlotte B. Valentine v. Eugene Davis.**  
**At Law, No. 50,210.**

The object of this suit is to recover the sum of five hundred dollars (\$500), with interest and costs and to have a judgment for condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is therefore this 3d day of March, 1908, ordered that the defendant appear in this court on or before the fortieth day exclusive of Sundays and legal holidays after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Evening Star before said day.

[Seal] **THOS. H. ANDERSON**, Justice. True copy. Test: **J. R. Young**, Clerk, by **Fred. C. O'Connell**, Asst. Clerk. 10-31



**Legal Notices.**

**Aaron E. McLaughlin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Florence A. McComas, Deceased.**

No. 14,935. Administration Docket—.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Aaron E. McLaughlin, it is ordered this 3d day of March A. D. 1908, that Elizabeth A. Long and Jane Mary Andoun, and all others concerned, appear in said court on Monday, the 6th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-3t

**John M. Loughran, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Jane M. Watt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of March, 1908. WM. A. MCCARTHY, Administrator, by John M. Loughran, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,806. Administration. [Seal.] 10-3t

**Lord, Day & Lord, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James W. Pinchot, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of March, 1908. GIFFORD PINCHOTT, 1615 Rhode Island ave., Wash., D. C.; AMOS R. ENO PINCHOTT, 1021 Park ave., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,106. Admn. [Seal.] 10-3t

**SECOND INSERTION.**

**Seal & Marine, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Agnes Wilson Hedges, Deceased.**

No. 15,037. Administration Docket 33.

Application having been made by Walter S. Wilson for probate of the last will and testament of Agnes Wilson Hedges, and for letters of administration de bonis non c. t. a. upon her estate, it is ordered this, the 26th day of February, A. D. 1908, that George S. Wilson, Allen G. Wilson, William R. Wilson, and all others interested in said estate, appear in said court at 10 o'clock A. M., on Wednesday, the 8th day of April, A. D. 1908, to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 9-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Beverly Jackson, Deceased.**

No. 15,061. Administration Docket 33.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by John W. Glennan, it is ordered, this 21st day of February, A. D. 1908, that all unknown heirs at law and next of kin, and all others concerned, appear in said court on Monday, the 30th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederick Hohmann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 21st day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of February, 1908. HENRY F. W. ASCHTERKIRCHEN, 265 7th st. N. W.; MAURICE D. ROSENBERG, Jennifer Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,073. Administration. [Seal.] 9-3t

**Walter C. English, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Wilber Huson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of February, 1908. ADELAIDES HUSON, 211 East Capitol st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,034. Administration. [Seal.] 9-3t

**Birney & Woodard, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Francis S. McIlhenny et al. v. Cyrus W. Chappel et al.**

No. 27,585. Equity.

Upon consideration of the report of Arthur A. Birney, trustee, that he has sold the lot and unfinished building No. 815 8th st. N. E., at the price of \$3,100, it is this 27th day of February, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 23d day of March, 1908. Provided that a copy of this order be published once a week for three weeks before said date in The Washington Law Reporter and The Washington Herald. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 9-3t

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of John Collins, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 26th day of February, 1908. FRANK S. BRIGHT, Executor. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,064. Administration. [Seal.] 9-3t



**Legal Notices.****Alex. H. Bell, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Liston, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of February, 1908. PATRICK J. LISTON, 808 4th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,006. Administration. [Seal.] 9-3t

**J. Wilmer Latimer, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Montgomery Fletcher, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. HERBERT MARSHALL FLETCHER, care of J. Wilmer Latimer, Fendall Bldg., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,079. Administration. [Seal.] 9-3t

**Nathaniel Wilson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Norman Galt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. EDITH BOLLING GALT, 1908 20th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,089. Administration. [Seal.] 9-3t

**Berry & Minor, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles Shields Wainwright, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. CHARLES HOWARD WAINWRIGHT, 7 Wall st., New York City. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,948. Administration. [Seal.] 9-3t

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Ellen A. Bell, Deceased.  
No. 14,967. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by American Security and Trust Company, it is ordered this 24th day of February, A. D. 1908, that Louis Knox Bell, and all others concerned, appear in said court on Monday, the 30th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

[Seal] Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Legal Notices.****James A. Toomey and Lorenzo A. Bailey, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Mary Hoskins Lewis, Deceased.****No. 14,193. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by L. Fleet Luckett, it is ordered this 24th day of February, A. D. 1908, that the unknown next of kin and the unknown heirs at law of the said Mary Hoskins Lewis, deceased, and of Isaiah W. Hoskins, deceased, and all others concerned, appear in said court on Friday, the 3d day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**William D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Helen L. Sumner, Deceased.****No. 15,045. Administration Docket 38.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by William D. Hoover, executor named in said will and codicil, it is ordered this 28th day of February, A. D. 1908, that Estelle Daniels, and all others concerned, appear in said court on Thursday, the 2d day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**W. C. Sullivan, Solicitor****In the Supreme Court of the District of Columbia.  
Luther A. Swartzell et al., Executors, etc., Complainants,  
v. Edmund Shaw et al., Defendants.****No. 27,569. Equity.**

The object of this suit is to obtain the instructions of the court as to the duties of the complainants as executors and trustees under the will of the late Mary Jane Shaw. On motion of the complainants it is, this 21st day of February, A. D. 1908, ordered that the defendants, Trustees of the Presbyterian Church at Phillipsburg, Pa., Presbyterian Church of Phillipsburg, Edmund Shaw, John H. Shaw, Robert Saxton Shaw, Nettie M. Scott, William H. Shaw, Walter W. Shaw, and Laura G. Shaw, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks [Seal] in The Washington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Test: J. K. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 9-3t

**THIRD INSERTION.****Berry & Minor, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Jane H. Hooff, Deceased.****No. 15,028. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by William A. Hooff, it is ordered this 17th day of February, A. D. 1908, that William Hooff, John Lester Hooff, Mary Hooff, Clara Hooff, Bettie Hooff, Ellie Hooff, Mollie Hooff, Frank Hooff, Edward Hooff, and Joseph Hooff, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

[Seal] cation to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 9-3t

**Legal Notices.**

D. W. O'Donoghue and J. R. Fague, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Term.

Louis M. Paxton et al., Complainants, v. John W. Paxton et al., Defendants. Equity No. 27,276.

**DECREE.**

On consideration of the report of Daniel W. O'Donoghue and Joseph R. Fague, trustees, filed herein, showing that they have sold to Thomas J. Harford, for \$1,500, parts of lots 117 and 118, in square 1240, described as follows: Beginning at the southeast corner of lot 118 and running north on the west line of 28th street 23.60 feet to north line of premises 1344 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 23.60 feet to the south line of lot 117; thence east with the south lines of said lots 117 and 118 the distance of 117 feet to the point of beginning, being improved by premises 1342 and 1344 28th street northwest; and to Charles H. Parker, for \$1,150, parts of lots 117 and 118, in square 1240, described as follows: Beginning on the west line of 28th street at a point 23.60 feet north from the southeast corner of said lot 118, and running thence north with the said west line of the said street 24.04 feet to the north face of the north wall of house numbered 1346 28th street; thence west 117 feet to an alley 6 feet wide; thence south with said alley 24.04 feet to a point opposite to the place of beginning, and thence east 117 feet to the place of beginning, being improved by premises 1346 28th street northwest; and to Mary T. Mynabridge, for \$510, part of lot 122, in square 1239, described as follows: Beginning for the same at the end of 47 feet from the west line of said lot and running thence east with the south line of Beall (now called O street) 20 feet 6 inches, more or less; thence south and parallel with the said west line until it intersects the line of Holmead's addition to Georgetown; thence with the line of said addition to the depth of said lot 120 feet; thence west 2 feet and 6 inches, more or less; thence northerly and parallel with the said Holmead's Addition until it strikes the southwest corner of the back building of the house standing on the lot hereby intended to convey; thence with the dividing partition separating the two houses to the south line of Beall (now O street) to the place of beginning. It is, by the court, this 18th day of February, 1908, adjudged, ordered, and decreed that said sales be, and they are hereby, ratified and confirmed unless cause to the contrary be shown on or before the 19th day of March, 1908. Provided a copy of this order be published in The Law Reporter once a week for three consecutive weeks prior to said last mentioned date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 8-31

L. A. Dent, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William F. Gibbons, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 17th day of February, 1908. FRANK A. GIBBONS, CHAS. P. GIBBONS, 3185 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,062. Administration. [Seal.] 8-31

Emanuel M. Hewlett, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Herman L. Livingston, Deceased.  
No. 15,002. Administration Docket —

Application having been made herein for letters of administration on said estate, by Margaret B. Albert, it is ordered, this 14th day of February, A. D. 1908, that Ada B. Jones, Eureka B. Matthews, Mary B. Euing, Guy L. McKeal, Christopher Boxeman, Fannie Thompson, Gladys Thompson, Harry A. Thompson, and all others concerned, appear in said court on Tuesday, the 24th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-31

**Legal Notices.**

Lambert & McLean, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a Special Term for Probate Business.  
In re Estate of Christiana C. Queen, Deceased.  
Probate No. 15,677.

Application having been made herein for probate of the last will and testament of said deceased, Christiana C. Queen, and for letters testamentary on the estate of said Christiana C. Queen, by William Gordon Crawford, and citation having been issued against the parties named herein, and having been returned by the marshal of the District of Columbia as not to be found as to each of them, it is ordered this 18th day of February, A. D. 1908, that Mrs. Joshua Tevis, Walter Miller, Pierce Crosby Raborg, Walter Q. Raborg, Annie Crosby Bryant, Benjamin Gratz Crosby, Miriam Gratz Crosby, Pierce Crosby, and Miss Jean A. Crosby, and all others concerned, appear in said court on Friday, the 27th day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post, once a week for three successive weeks before the return day herein mentioned, the first publication to be not [Seal] less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of Probate Court. 8-31

Howard Boyd, Attorney  
In the Supreme Court of the District of Columbia.  
Daniel J. Heffner and John J. Pillion, Copartners, trading under the firm name and style of Heffner and Pillion, Plaintiffs, v. J. P. Robinson and W. O. Scully, Copartners, trading under the name and style of Palestine Stables, Defendants.

At Law, No. 49,987.

The object of the suit is to obtain judgment in the sum of twelve hundred and forty-six dollars and sixty-seven cents, and interest, and to subject certain property and credits, attached herein, to the payment thereof. On motion of the plaintiffs, it is this 14th day of February, A. D. 1908, ordered that the defendant, J. P. Robinson, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald, By the Court: THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 8-31

Lawrence Hufty, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Cara H. Wilson, Deceased.  
Administration No. 14,709

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Malcolm Hufty and Theodore D. Wilson, it is ordered this 18th day of February, A. D. 1908, that Arthur Roxby and William H. Roxby, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first [Seal] publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 8-31

Hugh F. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Florine A. Brewer, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 9th day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of February, 1908. LEWIS H. HINES, by Hugh F. Taggart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 13,997. Administration. [Seal.] 8-31

**Legal Notices.**

**Thompson & Laskey, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth McKay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of February, 1908. **WILLIAM M. STEWART**, 910 E st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,768. Administration. [Seal.] 8-8t

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Christian P. Dieterich, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. **CHARLES W. LEDERER**, 1107 Sixth st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,042. Administration. [Seal.] 8-8t

**L. Melendez King, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles C. Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of February, 1908. **W. CALVIN CHASE**, 1109 Eye st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,970. Administration. [Seal.] 8-8t

**David Rothschild, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Joseph A. Kaschka, Deceased.**  
 No. 15,024. Administration Docket -.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles E. Gerner, it is ordered, this 17th day of February, A. D. 1908, that Ida Hohl, and all others concerned, appear in said court on Monday, the 23d day of March, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 8-8t

**H. W. Sohn, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**James P. Healy et al. v. Francis Cunningham et al.**  
 Equity. No. 27,272.

On consideration of the report of James P. Healy and Henry W. Sohn, trustees in this cause, it is on this 17th day of February, 1908, ordered and decreed that the sale reported by them of lot A in block three (3) of Howard University subdivision of Effingham place, as per plat recorded in liber district No. 1, folio 76½ and 77, of the records of the office of the surveyor of the District of Columbia, to George Uricolo for thirty-three hundred and seventy-five (\$375) dollars, be ratified and confirmed unless cause to the contrary be shown on or before the thirtieth day after the date hereof, and that this order be published once a week for three weeks in The Washington Law Reporter previous to said date. **ASHLEY M. GOULD**, Justice. A True copy. Test: **J. R. Young**, Clerk, by **Wm. F. Lemon**, Asst. Clerk. 8-8t

**Legal Notices.**

**Ivan Heideman, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Eleanora Lippard, Plaintiff, v. William A. Lippard,**  
**Defendant. At Law, No. 50,128.**

The object of this suit is to recover from the defendant the sum of \$1,004, and interest thereon amounting to \$63, said sum being due under a certain agreement entered into between the parties hereto on December 22, 1903, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 20th day of February, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The [Seal] Washington Post before said date. By the Court: **WRIGHT**, Justice. True copy. Test: **J. R. Young**, Clerk, by **F. W. Smith**, Asst. Clerk. 8-4t

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Vermont, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Wilcox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of February, 1908. **EMMA N. WILCOX**, care of Geo. F. Williams, 900 F st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,064. Administration. [Seal.] 8-8t

**M. J. Colbert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Weser, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of February, 1908. **EDWARD F. CUMMISKEY**, 1842 You st. N. W.; **MICHAEL J. COLBERT**, 412 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,914. Administration. [Seal.] 8-8t

**FOURTH INSERTION.**

**Birney & Woodard, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**William H. Spelshouse, Complainant, v. The Unknown**  
**Heirs and Devises of Henry Bradford et al.**  
 No. 27,558. Equity.

The object of this suit is to establish the title of the complainant against the defendants by adverse possession lot three (3) in square 660, in the city of Washington, D. C. On motion of the complainant, it is, this 10th day of February, 1908, ordered that the defendants, **J. F. Hilton** and **William M. Harper**, cause their appearance to be entered on or before the fortieth day exclusive of Sundays and legal holidays occurring after the date of the first publication of this order, and that the defendants, the unknown heirs and devisees of **Henry Bradford**, deceased, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of the order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Washington [Seal] Times. By the Court: **HARRY M. CLA-BAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. A. C. Palmer**, Asst. Clerk. 7-5t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - MARCH 13, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Railroads—Accident to Person Crossing Track—Negligence.

In *Glaria v. Washington Southern Railway Company* the appeal was from a judgment entered upon a verdict directed by the trial court in an action for personal injuries. Plaintiff was a laborer in the employ of a party having a contract with the defendant railway company for the construction of a double track adjacent to a single track used by defendant for its trains, and with other laborers was accustomed to cross the latter track at the point of the accident in going to and from the "shanty" where they were quartered. In attempting to cross the track at this point plaintiff was struck and injured by an express train. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment, holding that the question of the defendant's negligence as well as that of the contributory negligence of the plaintiff should have been submitted to the jury. Upon the last point the court said that while it might seem unlikely, under the evidence, that plaintiff could have paused, looked and listened without seeing or hearing the train, it could not be assumed with the requisite certainty that he must have seen or heard it had he done so.

#### Scire Facias—Affidavit of Non-Payment of Judgment—Attachment—Discharge in Bankruptcy of One of Two Judgment Debtors.

In *Simpson v. Minnix* the appeal was from a judgment of fiat entered upon a writ of scire facias. It was contended by the appellant that as more than ten years had elapsed between the date of the judgment and the issuance of the writ of scire facias, the writ could only be issued upon motion and affidavit of non-payment, but this contention is denied by the Court of Appeals in an opinion by Mr. Justice Van Orsdel. It appeared also that a writ of attachment had been issued on the judgment, to which the garnishees made answer denying any indebtedness to the judgment defendants, and it was contended that no issue having been joined on these answers and no further proceedings had thereon the scire facias could not issue, as two writs on the same judgment could not be in existence at the same time; but the Court of Appeals holds that at the expiration of the time allowed to join issue on the answers of the garnishees the writs were abandoned and the proceedings discontinued. It appeared also that the scire facias was issued against both defendants in the judgment, one of whom set up in defense a discharge in bankruptcy obtained subsequent to the judgment, and upon that issue the proceeding against him was dismissed; but it is held that this did not preclude the entry of fiat against his co-defendant, the appellant.

#### Principal and Agent—Commissions of Agent.

In *Clark et al v. Morris* the action was to recover for services rendered by the appellee in procuring subscriptions to the stock of a mining corporation. It was claimed by the appellee that certain parties purchasing stock had been induced to do so through his efforts, though he had not actually made the sales. The jury found in his favor, and judgment was entered. The judgment is affirmed by the Court of Appeals, in an opinion by Mr. Justice Van Orsdel.

#### Usury—Suit to Recover—When Suit Must be Brought.

In *Brown v. Slocum* the action was brought to recover an alleged usurious payment. It appeared that plaintiff, on October 31, 1905, obtained from defendant a loan of \$183.60, payable in twelve monthly instalments of \$15.30 each, beginning January 4, 1906. At the time of the loan \$48.60 was deducted by the lender, which it was conceded was usury. The payments were all made when due, and thereafter, within one year from the date of the last payment, suit was brought to recover the \$43.60. It was contended by the defendant that, as section 1181 of the Code requires suit to recover usurious interest to be brought within one year from the date of the payment the plaintiff's claim was barred, since more than

one year had elapsed since the payment, but the Court of Appeals, in an opinion by Mr. Justice Van Orsdel, denies this contention, holding that plaintiff's cause of action did not accrue until the last monthly payment was made by her, and affirms the judgment.

**Partnership—Accounting—Decree Modified.**

In *Consaul v. Cummings and Cummings v. Consaul* there was an appeal and cross-appeal from a decree of the court below in a suit for an accounting of the affairs of a special partnership for the prosecution of certain claims against the United States. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, modifies the decree in respect of several items included in the accounting, and thereby reducing the amount found due, and as modified affirms it.

**Party Walls—Negligence—Damages.**

In *Cooper v. Sillers* the action was to recover damages alleged to have been sustained by plaintiffs as the result of the use by defendant of a party wall, which wall it appeared was erected prior to the adoption of the building regulations in force in this District. Appellant secured a permit for constructing an apartment house, using the wall of appellees' house as a party wall, and in his application for the permit represented said wall as a thirteen-inch wall, and claimed not to have discovered until he reached the fourth floor of appellees' house that the party wall was a nine-inch instead of a thirteen-inch wall. There was evidence to the effect that the wall was damaged and cracked as a result of its use by appellant. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, holds that the failure of the appellant to ascertain the thickness of the wall before beginning construction of his building was negligence on his part, rendering him liable for resulting damage, and affirms the judgment.

**Writ of Prohibition Denied.**

In the *Matter of the Estate of Dahlgren* the application was for a writ of prohibition to prohibit the respondents from proceeding with the trial of an issue as to the intestacy of the decedent. The Court of Appeals, in an opinion by Mr. Justice Robb, denies the application, holding that, if error was committed by the trial court, the petitioner's remedy was by appeal.

**Ejectment—Judgment Reversed.**

In *Bursey v. Lyon* the appeal was from a judgment for the plaintiff in an action of ejectment. The Court of Appeals reverses the judgment, in an opinion by Mr. Justice Van Orsdel. The decision involves an important question as to the proof of plaintiff's title in an action of ejectment, and will be reported next week.

**Court of Appeals of the District of Columbia.**

**THE CUNNINGHAM MANUFACTURING  
COMPANY, APPELLANT,  
v.  
THE ROTOGRAPH COMPANY.**

**CONTRACTS; MEETING OF MINDS; MUTUAL MISTAKE.**

1. Before there can be a contract the minds of the parties must meet honestly and fairly, without mistake or mutual misunderstanding, upon all the essential points in the transaction comprising the contract.
2. Where there is a mistake amounting to a mutual misunderstanding, or that on its face is so palpable as to place a person of reasonable intelligence upon his guard, there is not a meeting of the minds of the parties and therefore no contract between them.
3. In a letter from appellee to appellant offering for sale certain cards, the price was erroneously stated at \$1 per thousand instead of \$10. Some correspondence ensued, in which, however, the price quoted was not stated, and appellant ordered 25,000 cards. The cards were shipped by freight, and immediately thereafter a bill calling for \$10 per thousand was mailed. It was claimed by appellant that the goods were received and unpacked before receipt of the bill, and that it returned the bill for correction so as to show a price of \$1 as quoted instead of \$10. Appellee replied that the price of the cards was \$10, and if this was not satisfactory requested that they be returned. Appellant refused to return them. *Held*, that there was not such a meeting of minds of the parties in fixing the consideration as would constitute a contract; and that appellant, by its refusal to return the goods when the mistake was discovered and its election to retain them, must be deemed to have accepted the goods at the price for which they were billed and to be liable to make payment therefore at that price.

No. 1782. Decided March 8, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,882, entered upon the verdict of a jury in a case appealed from a justice of the peace. Affirmed.

Mr. ANDREW WILSON and Mr. N. W. BARKSDALE for the appellant.

Mr. J. C. GITTINGS and Mr. J. M. CHAMBERLIN for the appellee.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This action was originally brought by the appellee company before a justice of the peace of the District of Columbia. Judgment was rendered by the justice against appellant company, from which appeal was taken to the Supreme Court of the District. The case was there tried to a jury, and, upon a verdict in favor of appellee, judgment was rendered against appellant for the sum of \$225.85, from which this appeal is prosecuted.

It appears that, on March 7, 1906, the appellee, a New York corporation engaged in the business of manufacturing and selling souvenir postal cards sent a letter to the appellant, a corporation engaged in business in Washington, enclosing a sample of a new card it was publishing of various Washington views. The letter stated that the regular price of the cards was \$15 per thousand, but it was making a price to jobbers of \$1 per thousand. The evidence produced by appellee shows that this letter was copied on a typewriter by a stenographer from a circular letter, and, through some mistake, the price was inserted at \$1 per

thousand, when \$10 per thousand was the price quoted in the circular letter and the price intended to be quoted to appellant. To this letter appellant replied as follows: "In answer to your letter of the 7th inst., will say, your sample card sent us is very good and owing to the price you quote us the stock must be faulty in some way or your stenographer made a mistake in the price. If the stock is good and price if correct as quoted us, will take several thousand." The general sales-manager of the appellee company, the only witness appearing at the trial on its behalf, testified that on receipt of this letter he looked up the copy of the circular letter from which the letter sent to appellant had been copied (no copy of the letter sent having been retained), and replied by letter to the effect that the cards were first class in every respect, but they were being sold at cost, and they would guarantee them in every respect. On receipt of this letter, appellant wrote a letter ordering twenty-five thousand cards as per samples at price quoted in appellee's original letter giving the date. The price of \$1 per thousand, however, was not mentioned in this letter. Appellee, not having the full number in the subjects ordered, shipped to appellant by freight 22,585 cards. Regarding this shipment, witness for appellee testified "that the goods were shipped of his personal knowledge March 20, 1906, by freight, he thinks, over the Pennsylvania Railroad not later than 1 p. m., or it might be a little before or after 12. . . . That he sent bill to defendant by mail same afternoon that goods were shipped." The bill is as follows:

NEW YORK, *March 20, 1906.*

Cunningham Mfg., Co., Washington, D. C., to  
The Rotograph Co., Dr.

22585 Style 8. at \$10.....\$225.85

The only witness appearing on behalf of appellant testified that he did not know, and had no reason to believe, that the letter of March 7th was a circular letter; that the goods arrived here March 21, 1906, between 2 and 3 o'clock in the afternoon, and were received and accepted by him, and at once unpacked and placed upon his shelves; that between 4 and 5 o'clock of the same afternoon, he received the bill for the goods, showing a price of \$10 instead of \$1; that he immediately wrote plaintiff the following letter, calling its attention to the discrepancy between the bill and the price quoted: "We have just received your bill for postal cards and return it for correction. The price of these cards is \$1 instead of \$10 as you bill them. We refer you to your letter of the 7th inst., when you sent us sample and price." That he had no intimation of the alleged error, other than heretofore testified to, until the receipt of the bill, which was on the same day returned to plaintiff for correction. The receipt of plaintiff's letter of March 22, 1906, contained the first intimation he had as to the alleged mistake. The letter reads as follows: "Gentlemen: In reply to your valued favor we beg to inform you that there is evidently an error some place. The price of the cards as quoted you was ten dollars (\$10) per thousand and not one dollar. The duty alone on these cards costs us \$2.25 per thousand and you can readily understand that it would be impossible for us to sell same at any such price as \$1 per thousand. If the price we give you is not satisfactory at \$10 per thousand, we would request that you send us the cards immediately as

we have orders that will take up all the stock. Kindly return us the letter in which you state that you are quoted \$1 per thousand." In reply to a question by the court, witness said that the reason he did not return the goods after receipt of plaintiff's letter was because he had in good faith made a contract with plaintiff to deliver the cards at \$1 per thousand and had received the goods, and he did not desire to cancel it.

Numerous technical errors are assigned, but we think that the application of the law governing contracts of this kind will sufficiently dispose of this case, without considering separately the errors assigned. It is evident that there was not such a meeting of the minds of the parties in fixing the consideration as would constitute a contract. Before there can be a contract the minds of the parties must meet honestly and fairly, without mistake or mutual misunderstanding, upon all the essential points involved in the transaction composing the contract. If one of the parties, through mistake, names a consideration that is out of all proportion to the value of the subject of negotiation, and the other party, realizing that a mistake must have been committed, takes advantage of it and refuses to let the mistake be corrected when it is discovered, he can not, under these conditions, claim an enforceable contract. The law is that where there is a mistake that amounts to a mutual misunderstanding, or that on its face is so palpable as to place a person of reasonable intelligence upon his guard, there is not a meeting of the minds of the parties, and, consequently, there can be no contract.

In the case at bar, it is no excuse that appellant had received the goods before the mistake was discovered. Assuming that the goods came by freight from New York in twenty-four hours and reached appellant some hours in advance of the bill, which was mailed at the same time the goods were shipped, and assuming also that the goods were unpacked and placed upon appellant's shelves within two hours after their arrival and one hour before the arrival of the bill, these nice and accurate distinctions of time will not relieve appellant from aiding in the correction of the mistake when it was discovered, either by returning the goods as requested by appellee, or paying the price named in the bill.

Appellant company, by its refusal to return the goods when the mistake was discovered and its election to retain them, will be deemed to have accepted the goods at the price for which they were billed, thereby creating a new and enforceable contract, for which it must be held liable. This is not a case of incompetent parties, or where a party is seeking to urge his own carelessness as a valid excuse for his own mistake, or where one of two innocent parties is called upon to suffer loss after the goods have passed into the hands of innocent purchasers, or the transaction had passed beyond the control of the original parties; the case before us turns upon the refusal of the appellant to return the goods when it was discovered that, by reason of a palpable mistake, there had been no meeting of the minds of the parties and no contract existed between them. Under these conditions, by appellant's election to retain the goods, it thereby created a valid contract and bound itself to pay for the goods at the consideration named in the bill.

A case closely analogous to the one at bar is

cited in brief of counsel for appellee, Mummenhoff vs. Randall, 19 Ind. App., 44. In that case plaintiff wrote defendant as follows: "Gentlemen: Can we not get to doing some business? I quote you the following low price on potatoes—35 cts." It appears that the letter was dictated to a stenographer. By mistake the price was written at 35 cents a bushel, instead of 55 cents, as was dictated to her. Defendant answered, "Please ship us two or three cars at your earliest convenience, at price quoted." Upon receipt of this plaintiff shipped the potatoes and sent a bill by mail, charging 55 cents per bushel. On receipt of the bill defendant telegraphed back: "You offered potatoes at thirty-five, bill at fifty-five. Explain." Plaintiff telegraphed it was a mistake. The defendant, however, accepted the potatoes and refused to pay more than 35 cents. Thereupon plaintiff brought suit for the difference in price. The court held that there was no meeting of the minds of the parties and no contract, for "as mutual assent is necessary to the formation of a contract, it follows that an error or mistake of fact in that which goes to the essence of the agreement, and therefore excludes such assent, prevents the formation of the contract, since each party is really agreeing to something different, notwithstanding the apparent mutual assent." The court, considering the fact that the purchaser must have known of the mistake, said: "The minds of the contracting parties never met upon a proposition to sell potatoes at thirty-five cents a bushel, because it is alleged the price was a mistake, and that it was so understood by appellant to whom it was made."

... He (the defendant) knew that the appellee (plaintiff) had not, in fact, offered potatoes at that price." The court here expressed the law of this case. If the rule could be applied where the mistake consisted in quoting a price one-third below the price intended, what can be said where the variance is so unconscionable as the one at bar? In *Moffett, Hodgkins, Clarke & Co. v. Rochester*, 178 U. S., 373, the court, considering a case where a mistake had been made by a bidder for the performance of public work, said:

"If the defendants are correct in their contention there is absolutely no redress for a bidder for public work, no matter how aggravated or palpable his blunder. The moment his proposal is opened by the executive board he is held as in a grasp of steel. There is no remedy, no escape. If, through an error of his clerk, he has agreed to do work worth a million dollars for ten dollars, he must be held to the strict letter of his contract, while equity stands by with folded hands and sees him driven to bankruptcy."

It is charged that the court erred in its instructions to the jury. The conceded facts in this case would have justified a peremptory instruction for the appellee. It is, therefore, not clear just how the appellant could be prejudiced by the instructions given where the verdict was for the amount warranted by the evidence.

The evidence resolves itself to a concession by appellant that, after notice of the mistake and the offer on the part of appellee to have the goods returned, it retained them. Having elected to pursue this course, appellant obligated itself to pay for them at the price called for in the bill.

The judgment is therefore affirmed with costs, and the cause remanded to be disposed of in accordance with the views expressed in this opinion. Affirmed.

## Court of Appeals of the District of Columbia.

CHARLES G. PATTERSON, APPELLANT,

v.

GEORGE BARRIE ET AL.

CONTRACTS; RATIFICATION; LIMITATIONS; AFFIDAVIT OF DEFENSE INSUFFICIENT.

1. Where, notwithstanding the printed form for subscription to certain books stated the terms of payment and contained a provision that no other conditions or representations than those in the printed form should be binding on the publishers, an agent of the publisher accepted a subscription in which it was provided in writing that the subscriber might pay for the books at any time within two years in amounts and at such times as might suit his convenience, and the publisher ratified the act of the agent by accepting the subscription on the terms stated, the alteration in the printed terms of payment is no defense to an action against the subscriber to recover the price of the books brought after the two years had expired.
2. In such case, the statute of limitations does not begin to run until after the expiration of the two years within which payment was to be made.
3. In an action to recover the purchase price of certain books, an affidavit of defense which did not deny that the books were received, accepted and retained by defendant, nor that they responded to the description contained in the contract, and which alleged no misrepresentation as to contents, illustrations, materials or binding, but alleged merely that the books were not suitable for the purpose for which they were purchased and were of far less value than the price stated in the contract, held insufficient and a judgment for plaintiff under the 73rd Rule affirmed.

No. 1797. Decided March 8, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,153, entered under the 73d Rule for insufficiency of the affidavit of defense. Affirmed.

Mr. J. J. HEMPHILL and Mr. E. R. BRADDOCK for the appellant.

Mr. C. C. TUCKER and Mr. J. MILLER KENYON for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun by the appellees, George Barrie & Sons, to recover the sum of \$1,540, for seventy-seven volumes of books, sold to the appellant, Charles G. Patterson, at the price of \$20 per volume.

The declaration was supported by an affidavit sufficient in form and substance to warrant a summary judgment under the 73d Rule of the Supreme Court of the District of Columbia. There were attached to the affidavit and made parts of the same, the following conditions of subscription and acceptance thereof signed by the defendant, Patterson:

"EDITION DEFINITIVE.

Balzac's Novels. The *Comedie Humaine*.

*Conditions of Subscription.*

The Edition Definitive, on imperial Japan Velum paper, of the '*Comedie Humaine*,' by Honore de Balzac, will contain about three hundred and fifty etchings, after designs by G. Bussiere, G. Cain, Dubouchet pere, L. E. Fournier, A. Lynch, A. Roubadi, M. Vidal.

The work will be issued in fifty-three volumes, bound in short-silk cloth, at \$10 each. Only one thousand complete copies on Japan paper will be sold. The edition will contain the etchings in two states, viz: one with remarque, and one after



remarque. The price for unsold copies is, without notice, subject to advance. The subscription is for one copy as issued, and no other conditions or representations than those herewith printed will be binding upon the subscribers or publishers.

To GEORGE BARRIE & SONS, publishers:

On above named conditions I subscribe for and you agree to deliver me one copy of Balzac's *Comedie Humaine*, printed on imperial Japan vellum paper, crown 8 vo., in fifty-three volumes, for which I will pay \$10 each, and \$10 per volume for full Levant binding. To be paid for any time within two years, in amounts and at such times as may suit my convenience.

C. G. PATTERSON,

The Dupont, 1717 20th st., n. w.,

Dated Oct. 28, 1903. Washington, D. C.

Historical Memoirs;

Or, the Secret History of the Courts of Europe  
From the XVI to the XX Century.

Complete and unabridged, in twenty-four volumes.  
Bound in antique linen.

Illustrated with about 150 photogravures, after  
nature.

Designs, paintings, and portraits.

Messrs. GEORGE BARRIE & SON, Philadelphia:

I hereby subscribe for a complete set, in twenty-four volumes, Japan vellum edition, of *Historical Memoirs*, to be delivered 24 volumes at once, for which I agree to pay \$10 per volume. The publishers guarantee that there will be only one thousand copies of this edition printed on Japan vellum paper, and that the work as delivered will be equal in all respects to the sample shown by the solicitor, and \$10 per volume for full Levant binding. To be paid for any time within two years, in amounts and at such times as may suit my convenience.

C. G. PATTERSON,

The Dupont, 1717 20th st., n. w.,

Oct. 28, 1903. Washington, D. C.

The defendant entered pleas of non assumpsit; the statute of limitations; that conditions had been added to the printed form of conditions, changing terms of payment from delivery to such times and in such amounts within two years as might suit the subscriber's convenience, in violation of the printed conditions that no other conditions than those printed will be binding upon the subscriber or publishers.

The affidavit in reply to that of the plaintiff set out the facts of the subscription, and as to the fifty-three volumes of the *Comedie Humaine*, stated that no sample copy bound in full Levant was shown to defendant. It then proceeds to say: "That, on account of the extortionate and unreasonable price at which said volumes were offered, the said plaintiffs, by their agent as aforesaid, agreed, by a special provision inserted in the said contract, that said fifty-three volumes were only 'to be paid for at any time within two years, in amounts and at times to suit deponent's convenience.' And also that the following provision in said contract, to wit: 'and \$10 per volume for full Levant,' as well as the provision in regard to payment aforesaid, were inserted in ink in the printed form, which said form contained the following provision: 'No other conditions or representations than those herewith printed will be binding upon the subscriber or publishers.'" "That this last provision was not erased when the other provision was

written in the contract for which reason the promise to pay \$10 per volume for full Levant binding is void and of no effect." The statement supporting the plea of limitations is that as this contract was made October 28, 1903, and the provision as to payment within two years is not of binding obligation, the action begun February 7, 1907, was barred by the lapse of three years from the date of the contract. It was further stated: "That the consideration for said agreement signed by the deponent as aforesaid, was certain fifty-three volumes in full Levant binding as aforesaid, which were represented and warranted to this deponent by the said plaintiffs to be of the highest and best quality, and suitable for the uses and purposes of this deponent, and said volumes were purchased by the deponent in reliance upon said representations." "That deponent was wholly misinformed and misled by the plaintiffs through their agent as to the true worth and value of said books and of said Levant binding, and by the wrongful statements and representations of said agent was induced to sign said agreement for the payment of a sum largely in excess of the true value of said volumes, when said volumes were in truth and fact well known to the plaintiffs and their agent to be worth far less than the sum fixed by said agreement, and not suitable for the purposes for which they were purchased by the said deponent. This the deponent expects to prove at the trial." Substantially the same statements were made regarding the twenty-four volumes of the *Historical Memoirs* or *Secret History of the Courts of Europe*. It was not denied that the books had been delivered to and received by him as alleged by plaintiffs on December 9, 1903. This defense is not made in any of the pleas. The court, holding defendant's affidavit insufficient, entered judgment for the plaintiffs on their motion for the sum claimed, namely, \$1,540.

The defense founded on the additions made in writing to the printed contract, before execution, is without foundation. Grant that the agent of the plaintiffs exceeded his authority in changing the terms of payment, and that they would not have been bound thereby had they refused to accept the subscription and to deliver the books; nevertheless they have the power to ratify the act of their agent by accepting the subscription with the additional terms, which they did. Defendant had no right to complain that they accepted the subscription on his own terms. This necessarily determines the insufficiency of the plea of limitations as a defense, because the action was begun less than three years after the expiration of the two years within which the defendant had the right to make the payment. He was not in default until the expiration of that period.

The correctness of the judgment depends upon the last ground of defense, namely, the misrepresentation of the values of the books as stated in the supporting affidavit. It is quite true that an affidavit of defense must be accorded a fair and liberal interpretation. If the facts stated will, by any fair and reasonable construction, constitute a defense to the action within the scope of the defensive pleas, it is the right of the defendant to have the case tried by the jury. All that is required is that the facts alleged shall be sufficient to indicate a substantial legal defense made in good faith. *Dobbins v. Thomas*, 26 App. D. C., 157, 160, and cases there cited: 33 Wash. Law Rep., 743.

Tested by this principle, we are constrained to hold the affidavit defective. There is no plea, and no statement in the affidavit that the execution of the contract was obtained through the misrepresentation of the agent who procured it. It is not denied that the books were received, accepted, and retained without offer to return after opportunity for examination; nor is it denied that they responded to the description contained in the contract. It is not averred that any other representations were made as to the contents, or illustrations, or as to the character of the materials or binding that were untrue. The substantial statement is that the books were not suitable for the purposes for which they were purchased. What these purposes were, if made known or agreed to by the agent, are not stated. The statement that the books were of far less value than the sum fixed in the contract is not a sufficient defense on the ground of failure of consideration. *Brown v. Bank*, 18 App. D. C., 598, 609; 29 Wash. Law Rep., 819. Moreover, the affidavit itself states: "That on account of the extortionate and unreasonable price at which said volumes were offered, the said plaintiffs, by their agents as aforesaid, agreed by a special provision inserted in said contract that said 53 volumes were only to be paid for at any time within two years in amounts and at times to suit deponent's convenience."

That the agent may have represented the books to be of the actual value of the price of sale is one of those expressions of opinion common on the part of the seller, that, by itself, is not sufficient to constitute such a fraud as would violate a contract of sale. *Brewing Co. v. Tobin*, 19 App. D. C., 353, 358; 30 Wash. Law Rep., 170.

It is quite probable that the defendant was persuaded into making an improvident purchase of books for which he subsequently discovered that he had no real use, but that is not sufficient, in the absence of the allegation of actual misrepresentations relating to the contents, illustrations, or the character of the materials, typography or binding of the books that formed material parts of the inducement to make the contract, to warrant his refusal to perform.

We perceive no error in the action of the court in rendering judgment upon the pleadings and supporting affidavits, and it will, therefore, be affirmed with costs.

Affirmed.

**Lottery.**—A scheme by which a prize is offered to persons subscribing for certain periodicals who shall guess nearest the popular vote cast for President at a certain election is held, in *Waite v. Press Pub. Assn.* (C. C. A. 6th C.), 11 L. R. A. (N. S.), 609, to be a lottery or gift enterprise, within the statute forbidding the disposing of money by such means.

**Libel.**—Upon trial of an action for libel in charging plaintiff with larceny based on a court record, it is held, in *Register Newspaper Co. v. Stone* (Ky.), 11 L. R. A. (N. S.), 240, that plaintiff can not prove that, although he had pleaded guilty to the charge, he was in fact not guilty.

That an action in tort will not lie against a landlord in favor of a tenant who receives a personal injury, because the landlord fails to comply with his contract to make repairs, is declared in *Dustin v. Curtis* (N. H.), 11 L. R. A. (N. S.), 504.

## Court of Appeals of the District of Columbia.

GEORGE W. BLANKENSHIP ET AL., APPELLANTS,

v.

EDWARD O. COWLING.

ATTORNEY AND CLIENT; QUANTUM MERUIT; DUTY OF CLIENT TO ADVANCE COSTS.

1. On failure of the client to pay costs and supply adequate funds for the prosecution of his case, an attorney is justified in abandoning the case and may recover upon a quantum meruit for services rendered, unless there is an agreement that the client shall not advance costs unless shown that there is property of the defendant out of which a judgment can be made.
2. In an action by an attorney to recover upon a quantum meruit for services rendered, where plaintiff claimed that defendant had refused to advance costs, and defendant relied upon an agreement that he should not be required to advance costs unless shown that there was property out of which the judgment could be made, a judgment for defendant affirmed.

No. 1785. Decided March 8, 1906.

APPEAL by plaintiffs from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,768, entered upon a verdict in an action to recover for professional services. Affirmed.

Mr. E. W. R. EWING and Mr. L. T. EVERETT for the appellants.

Mr. C. H. MERRILLAT for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The record does not show how this case, evidently begun in the court of a justice of the peace, was taken before the Supreme Court of the District from whose judgment this appeal has been prosecuted. There are no pleadings, but the record shows an affidavit made by Lloyd T. Everett that was filed in a justice's court on August 30, 1906. In this affidavit appears an account by said Everett and George W. Blankenship against defendant for \$50 on account of professional services performed for defendant "under contract of June 8, 1906, in the matter of the prosecution and collection of a claim for \$241 against Eugene A. Atchison, and damages for breach of said contract."

On the trial in the Supreme Court, Lloyd T. Everett testified that he and George W. Blankenship were practicing lawyers: That shortly before June 8, 1906, defendant Cowling placed in their hands a claim against Eugene A. Atchison for \$241 for labor and materials furnished said Atchison in the construction of a building, and desired to have a mechanic's lien established. For this service he paid a fee of \$5. That there was some discussion whether the notice of lien should be followed by other proceedings, but nothing was agreed upon. That after filing the lien he told defendant that in order to get the money it might be necessary to obtain a judgment before a justice of the peace, and have the same docketed in the upper court, and a creditor's bill filed thereon, as it seemed that Atchison had two lots out of which the money might be made. That after several conversations it was agreed that Everett should bring suit in the justice's court. That suit was brought and judgment recovered. That defendant had give him \$1.60 to pay costs.

That thereafter Everett called on defendant for \$12 or \$15 to be used in paying costs of \$1 in the mechanic's lien matter and docketing the judgment in the higher court, but defendant refused to pay the same. That later he notified defendant he would hold him on his original contract, and sent him a bill for \$60.25. That later he again asked for the \$12 or \$15 which was again refused, and suit was brought in the justice's court on a quantum meruit, without waiving his right on the contract. The alleged contract was read in evidence. It reads:

"JUNE 8, 1896.

"MR. EDWARD O. COWLING:

"I hereby agree to conduct your suit against Eugene A. Atchison for \$241 on a contingent basis of 25 per cent of the amount recovered (this, of course, in addition to the \$10 charged you and Eisinger and Wilson for filing notice of mechanic's lien, looking up records, etc)."

No signature appears to this communication. On cross-examination he testified that, the \$12 or \$15 asked for was to be used as follows: \$2.00 cost of execution and costs of justice's court, \$1 still due for costs in filing lien; and the balance to be used in taking judgment above. He denied that he told defendant that part of it was for costs and the remainder for legal services. That at the time he did not know that the cost of docketing in the higher court was \$5. He had thought it was \$10. He also denied that he told defendant he would not have to furnish any more costs until he showed defendant that Atchison had unincumbered lands out of which defendant would be sure to realize his judgment. That he told defendant that it looked to him that Atchison had two unincumbered lots.

A witness for the plaintiff (one Uphoff) who heard a part of the conversation between defendant and Everett, testified that Cowling did not seem disposed to go ahead and seemed timid about advancing any more money; but witness told Everett "to go ahead against the two unincumbered lots mentioned, and he would come out all right." That there was some talk about the two lots. That the first person who spoke of them was defendant, who said that the lots were unincumbered. Evidence was offered tending to show that the services performed by plaintiffs in the matter of the litigation in the justice's court were reasonably worth \$25.

Defendant offered evidence tending to show that he had employed Everett to file the mechanic's lien and paid him therefor, taking his receipt, and owed him nothing on that account. Defendant testified that there was some talk after notice of lien filed, as to necessity of obtaining a judgment in justice's court and taking other proceedings. That he refused to take any other proceedings or to spend any more money in the matter. That Everett told him he thought he could show him unincumbered property of Atchison, and thought two lots adjoining his house were in that condition. That witness after advancing \$1.60 for costs in justice's court would do nothing more until Everett was able to show him unincumbered property out of which he could get his money back. He was willing to have the judgment docketed if he could be shown such property out of which he could make his judgment before asked for anything. He denied saying that he knew of such unincumbered property

of Atchison. The witness who testified thereto (Uphoff) had said that the money might be made out of three lots because they were unimproved; but defendant refused to pay other than the \$1.60 costs in justice's court until assured nothing would be asked of him until Everett showed him clear and unincumbered property in Atchison. That on this assurance he had entered into an agreement and advanced the \$1.60 to obtain the judgment in the justice's court. That after judgment had been obtained Everett wanted \$12 or \$15 to go ahead with the case. As Everett had never shown him that Atchison had unincumbered property he refused to advance the money called for. That Everett told him he wanted the money in part for costs and to get a fee out of it. That he told him there was to be no fee until the money was collected, and also of his agreement that he was to be asked for no more money until shown unincumbered property of Atchison. That Everett said: "Well, you will get a nice little bill from us." That he told him thereupon he owed him nothing. That later Everett called and wanted \$12 for costs and fees, and defendant repeated what he had said before as to the understanding. That Everett said part of it was for fees. On cross-examination he was asked how he expected Everett to show him unincumbered property, and said that he simply expected a statement from Everett that he knew the property was unincumbered; that Everett had never made such a statement, but simply that he thought so.

A witness for defendant testified that he was present when Everett called to get \$12 or \$13, and heard him say it was for costs and for a small fee. Everett, in rebuttal, denied any agreement other than that in writing, and said that it was not made with reference to the two lots, and that he had not agreed to show an unincumbered title in Atchison.

The court refused seven special instructions asked by the plaintiff and gave one to the effect that: As between counsel and client it is the duty of the client to pay such court fees as are necessary to the proper prosecution and maturing of his case, and that the attorney may properly demand of his client that he pay such costs and supply adequate funds for the prosecution of his case, and that failure or refusal by the client to furnish such costs and funds is sufficient ground to justify the attorney in abandoning the case. The general charge of the court defined the law in application to the facts, informing the jury that it was the duty of the defendant to advance the costs for maintaining the action, unless there was a further agreement that the defendant should not advance costs for the purpose until shown that there was unincumbered property out of which the money could be made, and that the burden was on the defendant to show such agreement. They were further charged that plaintiff was not entitled to demand any money for fees under the agreement, until the money was realized on the claim.

The contract consists of the proposition to collect the defendant's demand against Atchison for a fee of 25 per cent, contingent upon collection. It does not appear that the proposition made in writing had been signed by Everett, or accepted in writing by the defendant; but it is evident that it represents the general understanding of the parties to that extent. It is upon the claim

of its breach by the defendant, through failure to advance money for costs, that the action for the value of the plaintiff's services rests. "If to be regarded as a reduction of the original contract to writing when suit was authorized in the justice's court, it does not purport to embrace all litigation that might follow the recovery of judgment before the justice of the peace.

Defendant's testimony tending to show the later agreement relating to a creditor's bill to enforce the judgment, was not objected to as in contradiction of the written agreement of the parties, if such it was, and the court did not err in submitting it to the jury as a part of the case.

The special instruction in respect of the duty of defendant to advance proper costs was given as requested by the plaintiffs, and the jury were charged also that the burden of establishing the fact that advancement of costs for litigation in the superior court was dependent upon the showing by plaintiffs that the judgment debtor had property which could be subjected thereto, was upon the defendant. There was no attempt on the part of the plaintiffs to show that there was such property, or that the judgment could probably have been enforced through such further proceedings.

Having defined the legal obligation of the contract to advance necessary costs, and the circumstances under which an attorney whose fee is dependent upon collection may treat the contract as at an end, and demand the value of his services to the time of its breach, the question of fact as to the agreement concerning the advancement of cost for further proceedings was properly left to the jury.

It is unnecessary to consume time with the statement and discussion of the several instructions asked by the defendant which the court refused. Such of these as contained correct statements of the law were covered in the general charge, which stated the case fully and fairly to the jury.

Finding no reversible error committed in the trial of the case, the judgment will be affirmed with costs.

Affirmed.

MARION L. GARRISON ET AL., PLAINTIFFS  
IN ERROR,  
v.  
DISTRICT OF COLUMBIA.

**PLUMBING REGULATIONS; STATUTORY CONSTRUCTION.**

Plaintiffs in error were in the employ of a manufacturer of apparatus for heating and supplying water for domestic purposes. Their employer contracted to install a boiler and tank in a hotel then in process of construction, and plaintiffs in error were sent to set it up. In so doing they were required to connect two short pipes extending between the boiler and tank, which had been disconnected in order that they might be moved conveniently to the building where the apparatus was to be installed; but did not connect the apparatus with the water pipes or service. It was held that this was not engaging in the work of plumbing within the meaning of the act of Congress of June 18, 1898 (30 Stat., 477), and the conviction of the plaintiffs in error of a violation of that statute reversed.

No. 1851. Decided March 3, 1906.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. JAMES B. ARCHER, JR., for the plaintiffs in error.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the defendant in error.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This cause comes here on writ of error from the Police Court of the District of Columbia. The plaintiffs in error, defendants below, were convicted upon an information charging that they, on the 1st of November, 1907, within the District of Columbia, "did then and there perform certain plumbing work, without first having obtained a license so to do, or being in the employ of a licensed master plumber, to wit, made connection of hot water heater and boiler for heating water for domestic purposes in Congress Hall Hotel contrary to, and in violation of, the act of Congress, approved June, 1898, and constituting a law of the District of Columbia."

It is conceded that the defendants were not master plumbers, or in the employ of a licensed master plumber. It appears that the defendants were in the employ of one whose business it was to manufacture and sell apparatus for heating and supplying water for domestic purposes. The apparatus here in question consisted of a boiler and tank, which was installed in the Congress Hall Hotel, in the city of Washington, at the time the building was in course of construction. The boiler and tank were disconnected in order that they might be moved conveniently to the building where the apparatus was to be installed. The defendants were employees of the party furnishing the heater, and were sent by their employer to set it up. In order to accomplish this, they were required to connect two short pipes extending between the boiler and tank.

At the trial a number of master plumbers testified as witnesses for the District to the effect that the work performed by the defendants in connecting the two pipes constituted plumbing work. The employer of the defendants testified "that the tank and boiler were connected on the premises of the Congress Hall Hotel building only because it was too large to be moved there if it had been connected in his shop; that the men did not connect the apparatus to the water pipes or service, as he had simply sold it to the hotel company, and connected the tank and boiler as above stated; . . . that the apparatus, when connected together by the said pipes, constitutes a heating device for supplying hot water for domestic purposes, which it is his business to manufacture and sell, and of which he invented certain improvements." The record further discloses that "each of the defendants thereupon testified that neither of them had connected either of the tanks with the water pipes or service of the building."

Plaintiffs in error rely upon the following assignment of errors: "1. The court erred in ruling, in effect, that it was sufficient to charge in the information, under the statute, that the defendants did 'perform certain plumbing work.' 2. In ruling, in effect, that the mere connection of the boiler and tank, while neither was connected with the water pipes or service, nor with any water main, was engaging in the work of plumbing under the circumstances. 3. In receiving the opinions of the witnesses that the acts of the defendants were plumbing."

We think a consideration of the second assignment of error will be sufficient to dispose of this case. The prosecution was based upon section 5

of the act of Congress of June 18, 1898 (30 Stats., 477), being "an act to regulate plumbing and gas fitting in the District of Columbia." The section is as follows: "Section 5: That it shall be unlawful for any person to engage in the work of plumbing or gas fitting in the District of Columbia, unless he is licensed as provided in this act, or is an employee of a licensed master plumber." The evidence clearly discloses that the boiler and tank, which were connected in this instance, constituted, when joined together, a single heating apparatus. It was a device manufactured by the employer of the defendants. It is not contended that the employer was a plumber or engaged in that business, and the record does not show that the defendants were either plumbers or engaged to do plumbing work. All they did in this instance was to set up the heating apparatus, which consisted solely of properly locating the heater in the building and connecting the two pipes between the boiler and tank.

The object of this statute is to prevent unlicensed persons from engaging in the work of plumbing. It is in the nature of a police regulation for the protection of the public health. Being a penal statute, it must be construed liberally in favor of the defendants, and strictly against the Government. In *Mackall v. District of Columbia*, 16 App. D. C., 301, 306: 28 Wash. Law Rep., 351, the court, considering the effect of a statute regulating the sale of intoxicating liquors in the District of Columbia, said: "At the same time, the law must be given a reasonable interpretation; an unreasonable interpretation would only serve to bring it into discredit, and would thereby ultimately thwart the laudable purposes of the law-makers. . . . It is well-settled law that every word of a statute is to receive effect and be construed according to its ordinary and natural signification, and the strict letter is not to be departed from without good and sufficient cause; but it may be regarded as equally well-settled law that, when a thing is not within the meaning and purpose of the statute, although perhaps within the strict letter, it will not be construed as included in the enactment." Applying this construction to the case at bar, we think that the statute would not embrace the mere connecting of the parts of a heater that ultimately may form a part of the completed plumbing system of a building. If the contention of the corporation counsel should be sustained, it might lead to unlimited abuse. If the employer of the defendants could be prevented by this law from sending men in his employ to connect the parts of this heater in the hotel building, the law would likewise prevent the performance of the same work at his factory or shop before being removed to the building to become a part of its plumbing system. Followed to its logical conclusion, no one would be allowed to manufacture a heating device in which the parts were connected by pipes without first securing a plumber's license. In setting up this heating apparatus defendant did not attempt to connect it with the water pipes, or with the service in the building, or with the water mains. This was left to the persons charged with doing plumbing work on the building. We are of the opinion that the statute will not admit of so narrow a construction as is sought to be placed upon it by the corporation counsel, and that the Police Court erred in rendering judgment against defendants.

The judgment of the Police Court is reversed, and the cause remanded with instructions to proceed in accordance with the views expressed in this opinion.

Reversed.

JAMES H. JOHNSON, PLAINTIFF IN ERROR,

v.

DISTRICT OF COLUMBIA.

POLICE REGULATIONS; CRUELTY TO ANIMALS.

1. Sections 1 and 2 of the act of the Legislative Assembly of this District of August 23, 1871, providing a penalty for cruelty to animals, are mere police regulations, and therefore within the scope of powers delegated to the municipality by Congress.
2. Said sections were not repealed by sec. 1636 of the Code, but being police regulations were saved from repeal by the provisions of that section of the Code relating to police regulations.

No. 1249. Decided March 3, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. HAYDEN JOHNSON and Mr. T. W. PATTERSON for the plaintiff in error.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the defendant in error.

Mr. Justice ROBB delivered the opinion of the Court:

The plaintiff in error was convicted in the Police Court of the District of Columbia upon two consolidated informations charging that he, on August 9, 1907, did "cruelly work and cause to be worked a certain animal of the horse kind, said horse being unfit for service, being weak," and that he on the same day did "cruelly work and cause to be worked a certain animal of the horse kind, said horse being unfit for service and having a sore shoulder," both in violation of the act of the late legislative assembly of the District of Columbia, approved August 23, 1871.

Section 1 of said act prescribes as a penalty for overdriving, etc., animals, or depriving them unnecessarily of food, etc., imprisonment in jail not exceeding one year, or a fine not exceeding two hundred and fifty dollars, or both fine and imprisonment.

Section 2 of said act, upon which said informations were predicated, is in these words: "Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel, or inhuman manner, and knowingly or wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in section one."

In the first assignment of error it is contended that the act in question is general legislation and not an exercise of municipal power which the organic act creating a territorial government authorized (16 Stat., 418).

We think it clear that the two sections of the act above referred to, which, it will be observed, are complete in themselves, are mere police regulations, and, therefore, within the scope of powers

delegated to the municipality by Congress. *Stoutenburg v. Hennick*, 129 U. S., 141; *Smith v. Olcott*, 19 App. D. C., 61; 29 Wash. Law Rep., 766. Cruel treatment of helpless animals at once arouses the sympathy and indignation of every person possessed of human instincts—sympathy for the helpless creature abused, and indignation towards the perpetrator of the act—and in a city, where such treatment would be witnessed by many, legislation like that in question is in the interest of peace and order and conduces to the morals and general welfare of the community. "Laws for the prevention of cruelty to animals may well be regarded as an exercise of such police power. That good government calls for the condemnation of such acts as are prohibited by the ordinance ought not to be questioned. The subject is one, preeminently one for local municipal regulation." *City of St. Louis v. Schoenbush*, 95 Mo., 618.

That Congress deemed the act within the scope of the powers delegated to the municipality is evidenced by the act of February 13, 1885 (23 Stat., 302), which provided that thereafter the "Association for the Prevention of Cruelty to Animals for the District of Columbia" should be known as the "Washington Humane Society" and should "be authorized to extend its operation to the protection of children as well as animals from cruelty and abuse." Said act of February 13, 1885, makes it a misdemeanor to abuse, abandon or wrongfully employ a child, or to entice a female child to become a prostitute, etc. It is apparent, therefore, that Congress fully appreciated that moral suasion would be abortive in dealing with those who would unnecessarily inflict cruelty upon either children or animals.

It is also contended that because section 6 of the act in question ordains that "fines and forfeitures collected upon or resulting from the complaint, or information of any member of the association for the Prevention of Cruelty to Animals under this act shall inure and be paid over to said association, in aid of the beneficial objects for which it was incorporated;" and because such a provision is in effect the grant of an exclusive privilege and, therefore, repugnant to section 17 of said organic act creating the territorial government, the fine imposed in this case was illegally imposed, there being no one authorized to receive it. It is not necessary to consider the merits of this contention. Section 6 does not provide that all fines and forfeitures shall inure to the benefit of the association. It is only when fines result from the complaint of a member of the association that they are to be paid to the association. All other fines follow the usual course and are paid into the public treasury. There is nothing in the record showing that the fine in this case is to be paid the association, the docket entry being "Guilty. Sentence: To pay a fine of ten dollars and in default to be committed to the workhouse for the term of thirty days." Assuming the provision in favor of the association to be void, the validity of the act would not be affected since all fines imposed under the act would then be paid into the public treasury.

It is further contended that section 3 of the act under consideration relating to the transportation of animals by railroad companies is a restriction upon interstate commerce, and, therefore, void. We will not stop to inquire whether there is any

merit in this contention because the section upon which this prosecution was predicated is complete in itself and separable from and independent of section 3. It may, therefore, be enforced without reference to that section. *District of Columbia v. Green*, 29 App. D. C., 296; 35 Wash. Law Rep., 263.

The next and last contention is that said act of August 23, 1871, was repealed by section 1636 of the Code. That section expressly saves from repeal all acts of the legislative assembly of the District of Columbia relating to "police regulation," and, as we have already held that the section upon which these informations were based is a police regulation, it follows that it was not repealed by section 1636 of the Code.

The judgment appealed from, therefore, is affirmed with costs.

Affirmed.

**Master and Servant.**—A contract between an employer and employee by which a fund shall be created by joint contributions, which, in case of the death of the employee, shall be paid first to his widow, and in which the employer reserves the right to retain all sums due for indemnities under the contract until a release is properly executed by all persons interested in or injured by the death of the employee, is held in *Frank v. Newport Min. Co.* (Mich.), 11 L. R. A. (N. S.), 182, not to require a release only from those interested under the contract, but to justify the employer in retaining the fund until the widow presents a release from all persons interested in or injured by the death of the employee. The other authorities on contracts requiring servant to elect between acceptance of benefits out of a relief fund and a prosecution of his claims in an action for damages are collated in a note to this case.

A statute requiring the blocking of railroad switches, and making the failure to do so prima facie evidence of negligence in case an employee is injured by absence of a block, is held, in *Denver & R. G. R. Co. v. Gannon* (Colo.), 11 L. R. A. (N. S.), 216, not to destroy the defense of assumption of risk.

In an action by an employee to recover damages for injuries received on account of the master's failure to comply with the provisions of the factory act, requiring the guarding of machinery for the purpose of protecting employees, it is held, in *Western Furniture & Mfg. Co. v. Bloom* (Kan.), 11 L. R. A. (N. S.), 225, that assumption of risk is not available as a defense.

A regulation of a railroad company requiring car repairers, when at work under or about a car, to see that a blue signal is displayed at each end of the car to protect it from being coupled to or moved, is held, in *New York C. & St. L. R. Co. v. Ropp* (Ohio), 11 L. R. A. (N. S.), 413, to be a reasonable rule, and binding upon a car repairer who at the time of his employment agreed that he understood the rule and would obey it.

**Infants.**—That it is negligence, as matter of law, for a child ten years old, after seeing from a point on the sidewalk a street-car approaching, 80 feet distant, to attempt to walk across the street without any precaution to avoid collision with the car, is declared in *Holian v. Boston Elev. R. Co.* (Mass.), 11 L. R. A. (N. S.), 186.

**Fraudulent Transfers—Sale of Entire Stock of Goods.**—In *Allen v. McMannes*, 19 Am. B. R., 276, it has been held that the sale of the entire stock of goods of a retail merchant within four months of his adjudication as a bankrupt cast the burden of proof upon the purchaser to show that he had no notice of facts or circumstances sufficient to arrest his attention and puts him on inquiry and requires him to use such means of knowledge as were at hand to learn whether the seller was not in financial difficulty.

**Bankruptcy Preference—Payment to Township Within Four Months Period.**—Where a debtor, knowing that he was insolvent and unable to pay his creditors in full, five days before his adjudication made a payment of money to the board of trustees of a township, who at the time knew of the insolvency of the debtor, and that said payment was intended to be preferential, it has been held, in *Painter v. Napoleon Township*, 19 Am. B. R., 412, that the trustee in bankruptcy may maintain an action against the said board of trustees to recover the payment.

**Discharge—First Refused—Second Granted Without Objection—Action on Provable Debt Barred.**—The Supreme Court of the United States has recently held, in the case of *Bluthenthal v. Jones*, 19 Am. B. R., 288, that where, upon the objection of a creditor having a provable debt, the bankrupt is denied his discharge, but in a subsequent bankruptcy the same creditor intentionally remained away from court and the bankrupt was granted his discharge without objection, an action upon said debt, if it is a dischargeable one, is barred, where the ground upon which the first discharge was refused does not appear.

**Reentry for Breach of Condition.**—If a grantee in a deed containing a condition subsequent that, when the land conveyed shall cease to be used for railroad purposes, it shall revert, divides the land and devotes one portion of it to other purposes, it is held, in *Moss v. Chappell* (Ga.), 11 L. R. A. (N. S.), 398, that there is a breach of the condition as to the portion so used, and that the grantee or those claiming under him can not defeat the right of the grantor to enter, merely upon the ground that the condition in the deed did not provide that the land should revert if any portion of it should no longer be used for railroad purposes.

**Negligence.**—The right of a municipal corporation to claim exemption from liability for damages to a building, caused by its negligence in blasting a ditch for a sewer in an alley at the side of the building, on the ground that the work is of public benefit, or even a public necessity, is denied in *Cherryvale v. Studyvin* (Kan.), 11 L. R. A. (N. S.), 385.

**Telegraph Companies.**—The validity of a printed provision upon blanks used in delivering messages to a telegraph company, that the company shall not be liable for mistakes and delays in the transmission or delivery, or for non-delivery, of any unrepeatable message, beyond the amount received for sending the same, is denied in *Western U. T. Co. v. Milton* (Fla.), 11 L. R. A. (N. S.), 560.

**Rescission.**—One having an option to purchase corporate stock is held, in *Montgomery v. Hundley* (Mo.), 11 L. R. A. (N. S.), 122, to be such an owner of it as will entitle one for whom he acts as agent to buy it to rescind his purchase in case he withdraws from his principal the facts in respect to his relation to the stock.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

G. Thomas Dunlop, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George T. Dunlop, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of March, 1908. EMILY REDIN DUNLOP, 8102 Q st.; G. THOMAS DUNLOP, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,070. Administration. [Seal.] 11-31

Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of George A. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of March, 1908. MAYLIE STOUT JONES, care of Wilson & Barksdale, 504 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,101. Administration. [Seal.] 11-31

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert S. Lytle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of March A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of March, 1908. AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,100. Administration. [Seal.] 11-31



**Legal Notices.**

Ellen S. Mussey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Christian Hange, Deceased.  
No. 15,982. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellen S. Mussey, it is ordered, this 12th day of March, A. D. 1908, that Fra Helga Nicolaysen, Fra Anna Krohn and Fra Rustad, and all others concerned, appear in said court on Tuesday, the 14th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

[Seal] cation to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Sieman & Leroh, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Minna Wright, Deceased.  
No. 15,091. Administration Docket—

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Mary Wright Gill, it is ordered this 10th day of March, A. D. 1908, that John Newton Wright, non-resident (care of United States Marine Corps, Alongopo, P. I.), and all others concerned, appear in said court on Tuesday, the 14th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

C. W. Stetson, Solicitor  
In the Supreme Court of the District of Columbia.  
Frederick G. Stutz v. Ella M. P. Chandler et al.  
Equity, No. 27,882.

The object of this suit is to partition lots 34 and 35 in James J. Shedd's subdivision of part of square 185, as said subdivision is recorded in Liber W. F., page 172, of the records of the office of the surveyor of the District of Columbia, between the parties entitled thereto. On motion of the complainant it is this 11th day of March, 1908, ordered that the defendants, Ella M. P. Chandler and Marie Chandler, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 11-3t

[Seal] week for three successive weeks in The Washington Law Reporter. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 11-3t

Henry H. Glassie, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise A. B. Hughes, Deceased.  
No. 14,732. Administration Docket—

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 3d day of March, 1902, purporting to be the last will and testament of Louise A. B. Hughes, deceased, having been returned as to Clara C. Mitchell, Marian G. Wilson, Annie C. Grief, Sumpter Calvert, Charles H. Hiern, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma T. Brown, Kittle White, Pattie Weeks, and unknown heirs at law and next of kin of Louise A. B. Hughes, "not to be found," it is, this 18th day of March, 1908, ordered that the issues be set down for trial on the 15th day of April, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is (whether said paper writing was procured by fraud), etc., etc. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-4t

[Seal] issues is (whether said paper writing was procured by fraud), etc., etc. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-4t

**Legal Notices.**

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary J. Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of March, 1908. CHARLES W. DARR, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,990. Administration. [Seal.] 11-3t

Wm. M. Lewin, Solicitor  
In the Supreme Court of the District of Columbia.  
Caroline Howes Lyckett, Complainant, v. Edward H. Lyckett et al., Defendants. Equity, No. 27,465.

Ordered this 11th day of March, A. D. 1908, that the sale made and reported by William M. Lewin, trustee for the sale of certain real estate of Rebecca Lyckett, deceased, which is in these proceedings mentioned and described, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of April next. Provided a copy of this order be published in The Washington Law Reporter once a week in each of three successive weeks before said last mentioned date. The report states the amount of the sale to be \$2,015. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 11-3t

[Seal] to be \$2,015. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 11-3t

**SECOND INSERTION.**

Edward S. McCalmont, Attorney  
In the Supreme Court of the District of Columbia.  
Julius G. Jackson v. Francis Duffy Jackson.  
Equity, No. 27,553.

The object of this suit is to obtain an absolute divorce. On motion of the complainant, it is, this 14th day of February, 1908, ordered that the defendant, Francis Duffy Jackson, and the codefendant, Richard Smallwall, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

[Seal] ceeded with as in case of default. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 10-3t

John M. Loughran, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Jane M. Watt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of March, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of March, 1908. WM. A. MCCARTHY, Administrator, by John M. Loughran, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,306. Administration. [Seal.] 10-3t

Walter C. Clephane, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. Chase, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of March, 1908. GRANT F. CHASE, 172 Washington st., Binghamton, N. Y.; MARY E. C. WALKER, 1125 11th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,019. Administration. [Seal.] 10-3t

[Seal.] 10-3t

**Legal Notices.**

W. K. Quinter, Solicitor

In the Supreme Court of the District of Columbia.

William K. Quinter, Trustee, Complainant, v. Charles H. Swan, Trustee, et al., Defendants.  
No. 27,630. Equity Doc. 61.

The object of this suit is to establish title in the complainant by adverse possession to part of original lot 4, in square 290, in the city of Washington, District of Columbia, beginning for the same on the north side of E street, 33.09 feet east from the southwest corner of said lot, the same being the southwest corner of the brick building erected on the eastern portion of said lot, and running thence northerly along the western face of the wall of said building 56.73 feet; thence west .23 of a foot; thence north with the face of said wall 81.91 feet; thence east 4.89 feet to the center of a 13-inch wall; thence north with the center of said brick wall 70.86 feet to the rear line of original lot 4; thence west along said rear line 22.50 feet more or less to the east line of the alley running north and south; thence south with the line of said alley 70.50 feet; thence west 14.833 feet to the west line of original lot 4; thence south with the west line of said lot 88.50 feet to the southwest corner of said lot; and thence east 33.09 feet to the place of beginning, according to the survey made by the surveyor of the District of Columbia, on the 3d day of December, 1907. On motion of the complainant, it is, this 4th day of March, A. D. 1908, ordered that the defendants, New England Hospital for Women and Children, a Corporation; John L. Barnard, Mary C. E. Barnard, Caroline A. Sayward, and William W. Swan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for

[Seal.] three successive weeks in The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-3t

Kappler & Merillat and Wolf & Rosenberg, Solicitors  
In the Supreme Court of the District of Columbia,  
Sitting in Equity.

James Lansburgh et al., Complainants, v. Myron M. Parker et al., Defendants. Eq., No. 27,067.

The object of this suit is for an accounting of the affairs of the Marshall Brown Syndicate, removal of Myron M. Parker, surviving trustee of said syndicate, for discovery, for an injunction against Myron M. Parker, Elizabeth C. Norton, executrix of Elizabeth C. Norton, Mary C. Norton, Hattie Norton Lee, and John Dudley Norton, heirs at law of John D. Norton, deceased, and William W. Hannon, from disposing of their interest in said syndicate, and Myron M. Parker and Lillie Parker, his wife, from disposing of interests in property mentioned in this suit, and to cancel the interests of said syndicate held by Myron M. Parker, Elizabeth C. Norton, executrix, Elizabeth C. Norton, Mary C. Norton, Hattie Norton Lee, and John Dudley Norton, heirs at law of John D. Norton and William W. Hannon. On motion of the complainant it is this 4th day of March, A. D. 1908, ordered that the defendants, J. Donald Cameron, John W. Morris, Virginia Danziger, and William Hyams, executors of the estate of Max Danziger, deceased; Hattie Norton Lee, John Dudley Norton, and Mary C. Norton, heirs at law of John D. Norton, deceased; L. C. Stanley, Augustus White, Alfred L. White, James H. Sweney, Charles Gans and William Gans, trading as Gans Brothers, Mary E. Wright, heir at law of M. B. Wright, James T. Shaw, John B. Falck, Horace F. Flak, Mary B. Washington, John S. Sullivan, and George F. B. Jackson, executors and trustees of the estate of George G. Vest, Sol Haas, Lillie M. Machelnaus, Florence A. Patterson, Philip H. McMillan, John H. Patterson, Harriet P. Sanders, and the Cananea Realty Company, a corporation, and each of them, cause their and each of their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this notice be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington

[Seal.] Herald before said day. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John E. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 10-3t

**Legal Notices.**

L. M. King, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Robert E. Walker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of February, 1908. JOHN F. RHINES, 600 2d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,904. Admn. [Seal.] 10-3t

Smith &amp; Walker, Solicitors

In the Supreme Court of the District of Columbia.  
Gertie Kendrick, Complainant, v. Josiah Kendrick, Defendant. No. 26,710. Equity Docket No. 57.

The object of this suit is to annul the marriage of Gertie Kendrick and Josiah Kendrick. On motion of the plaintiff it is this 2d day of March, A. D. 1908, ordered that the defendant, Josiah Kendrick, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before

[Seal.] said day. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 10-3t

Maddox &amp; Gatley, Solicitors

In the Supreme Court of the District of Columbia.  
In the Matter of Farmers' Trust, Banking and Deposit Company of Baltimore, Maryland.  
Equity, No. 27,402.

Upon consideration of the petition of R. Harrison Johnson, surviving receiver, and the accompanying affidavits herein this day filed, it is, this 4th day of March, 1908, ordered that said surviving receiver be, and he is hereby, authorized to sell to Samuel J. Henry lot numbered 23 in block numbered 21, Brookland, D. C., at and for the sum of two thousand six hundred (2,600) dollars in cash, subject to a broker's commission of three (3) per cent, taxes, assessments, rents, water rents, and insurance to be paid to the day of sale; that said sale so made shall be finally ratified and confirmed unless cause to the contrary be shown on or before the 25th day of March, 1908. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior to said

[Seal.] last mentioned date. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 10-3t

Fulton Lewis, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Benjamin F. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of March, 1908. MARIA J. S. DAVIS, 1508 Irving st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,058. Administration. [Seal.] 10-3t

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****John B. Lerner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry P. Sanders, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of March, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, By Fred'k Eichelberger, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,956. Administration. [Seal.] 10-31

**Aaron E. McLaughlin, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Florence A. McComas, Deceased.**

No. 14,985. Administration Docket—  
Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. l. a. on said estate, by Aaron E. McLaughlin, it is ordered this 3d day of March A. D. 1908, that Elizabeth A. Long and Jane Mary Audoun, and all others concerned, appear in said court on Monday, the 6th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD**, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**H. Winship Wheatley, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph I. Maguire, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 5th day of March, 1908. **CHARLES E. BOONE**, No. 114th st. E. **WM. J. KERBY**, 2409 1st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,992. Administration. [Seal.] 10-31

**McNeill & McNeill, Attorneys****In the Supreme Court of the District of Columbia.  
Charlotte B. Valentine v. Eugene Davis.****At Law, No. 50,210.**

The object of this suit is to recover the sum of five hundred dollars (\$500), with interest and costs and to have a judgment for condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is therefore this 3d day of March, 1908, ordered that the defendant appear in this court on or before the fortieth day exclusive of Sundays and legal holidays after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Evening Star before said day. By the Court: **THOS. H. ANDERSON**, Justice. True copy. Test: **J. R. Young**, Clerk, by **Fred. C. O'Connell**, Asst. Clerk. 10-31

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.****Gordon & Gordon, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Sarah Malone, Deceased.****No. 14,908. Administration Docket 37.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sadie E. Williams, it is ordered this 5th day of March, A. D. 1908, that Oliver Clapham, and all others concerned, appear in said court on Tuesday, the 7th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **HARRY M. CLABAUGH**, Chief Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**T. L. Jeffords, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Laura L. Dodge, Deceased.****No. 15,049. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Laura L. Paul, it is ordered this 3d day of March, A. D. 1908, that Samuel S. Pentz, Joseph Pentz, Annie L. Dean, Jennie Pentz, Samuel E. Pentz, John F. Pentz, William H. Pentz, Edith Pentz, Annie L. Young, Laura C. Blunt, Esther M. Haddaway, James M. Pentz, Charles E. Pentz and Edwin C. Pentz, and all others concerned, appear in said court on Friday, the 17th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD**, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 10-31

**Gordon & Gordon, Solicitors****In the Supreme Court of the District of Columbia.  
Amelia C. Travers et al. v. John H. Travers et al.****Equity, No. 21,484.**

The trustees herein having reported an offer from Robert H. Baum and William B. Brown to purchase part of lot 5 in square 379 in the city of Washington, D. C., as shown by plat annexed to said report, and improved by Nos. 927 and 929 Pennsylvania avenue northwest, for the sum of \$81,412, payable \$10,000 in cash and balance secured by first deed of trust on the property and payable as in said report set forth; subject to the payment from the purchase money of a broker's commission of 8 per cent. It is, by the court, this 3d day of March, A. D. 1908, ordered and decreed that said offer be accepted and that sale by the trustees on the terms set forth in said offer be ratified and confirmed, unless cause to the contrary be shown or before the 3d day of April, 1908. Provided this order be published in The Washington Law Reporter and The Evening Star, once a week for three successive weeks prior to said last-mentioned date. [Seal] **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 10-31

**Lord, Day & Lord, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James W. Pinchot, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 3d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 3d day of March, 1908. **GIFFORD PINCHOTT**, 1615 Rhode Island ave., Wash., D. C.; **AMOS R. ENO PINCHOTT**, 1021 Park ave., New York City. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,105. Admn. [Seal.] 10-31

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - MARCH 27, 1908

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### Decisions by the United States Supreme Court in Cases from this District.

In *Dotson v. Milliken* the action was to recover commissions agreed to be paid the plaintiff for finding a purchaser for certain coal lands. Plaintiff claimed to have found a purchaser for ten thousand acres of the lands who was able and willing to make the purchase upon the terms and in accordance with the representations of the principal, and was entitled to the agreed commission of \$2.50 per acre, notwithstanding the sale had not, in fact, been made, inasmuch as it failed of consummation because certain representations of the principal to the effect that a railroad was to be constructed into the said lands were found inaccurate. He obtained judgment in the trial court for the amount of his claim, and this judgment was affirmed by the Court of Appeals. 34 Wash. Law Rep., 334. The Supreme Court affirms the judgment in an opinion by Mr. Justice Holmes.

In the case of *Hutchins v. Munn*, an injunction was granted at the suit of the appellant to restrain the appellee from proceeding with certain extensive improvements in her residence adjoining that of the appellant in this city. The work was stopped at a period when the house was rendered uninhabitable. At the hearing the injunction

was dissolved, and the cause was referred to the auditor to assess the damages sustained by the wrongful suing out of the injunction. The auditor found that the appellee had been deprived of the use of her house for a considerable period, and assessed her damages at \$6,000. His report was ratified and confirmed by the trial court, and this action was affirmed by the Court of Appeals. 34 Wash. Law Rep., 734. The Supreme Court affirms the decree in an opinion by Mr. Justice Moody.

### State Railroad Rate Legislation Unconstitutional.

In two decisions announced by the Supreme Court of the United States on Monday, March 23, 1908, the recent railroad rate legislation enacted by the States of Minnesota and North Carolina, respectively, was declared unconstitutional. The opinions were delivered by Mr. Justice Peckham, Mr. Justice Harlan alone dissenting. In effect, the court holds that where laws, such as were involved in these cases, affect the rights of railroads and their stockholders guaranteed by the Federal Constitution, the Federal courts have authority not only to hear the claims raised, but also to stay the execution of such laws, notwithstanding the prohibition contained in the eleventh amendment to the Constitution against the institution of suits against a State. In brief, the court declares that as, between the prohibition of the eleventh amendment, and the rights of property protected by the fourteenth amendment, the latter is paramount when such rights are invaded.

In the case involving the Minnesota rate law, the attorney-general of the State was arrested on process issued by the Federal court for contempt in failure to obey an injunction granted by that court enjoining, *pendente lite*, the enforcement of the rate law, and a fine was imposed and he was committed to the custody of the marshal until it was paid or he should purge himself by withdrawing a suit brought in the State court to enforce the penalties provided in the act. Instead, he petitioned the Supreme Court for a writ of habeas corpus. The Supreme Court, as above stated, upheld the jurisdiction of the Federal court and denied the application.

In the North Carolina case, the appeal was from a decision by Circuit Judge Pritchard, who had granted an injunction *pendente lite* in a case involving the constitutionality of the rate law enacted by the legislature of that State.

Mr. Justice Harlan dissented from the decision of the court in both cases, expressing the view that the decisions in these cases mark a new era in the relationship between the States and the Federal Government, and between the State and Federal courts.

**Court of Appeals of the District of Columbia.****IN THE MATTER OF THE APPLICATION OF  
CAROLINE COLTON DAHLGREN.****WRIT OF PROHIBITION DENIED WHERE PARTY HAS  
ADEQUATE REMEDY BY APPEAL.**

1. A writ of prohibition will not be issued to prohibit the court below, holding the Probate Court, from proceeding with the trial of an issue as to whether a decedent died intestate, since, if the said court, in framing such an issue, under the circumstances of this case, committed error, such error may be corrected on appeal; and where such a remedy is open and available the writ of prohibition will not issue.
2. The fact that it was open to the petitioner in the present case to have applied for the allowance of a special appeal which, if granted, would have afforded adequate relief, is also a reason for the refusal of the writ of prohibition.

No. 200. Original. Decided March 10, 1908.

HEARING on an application for a writ of prohibition to restrain the Supreme Court of the District of Columbia, holding the Probate Court, from proceeding with the trial of an issue as to the intestacy of a decedent. Denied.

Mr. C. A. DOUGLAS and Mr. CONRAD H. SYME for the petitioners.

Mr. A. S. WORTHINGTON, Mr. R. GOLDEN DONALDSON, and Mr. B. W. PARKER for the respondents.

Mr. Justice ROBB delivered the opinion of the Court:

This petition was filed February 27, 1908, by Caroline Colton Dahlgren praying for a writ of prohibition to issue to Helen Margaret Beatrice Sacher, or Siegfried Sacher, her father and next friend, from prosecuting the trial of an issue of intestacy as framed in an order dated February 21, 1908, and to Mr. Justice Job Barnard of the Supreme Court of the District of Columbia, prohibiting him from proceeding with the trial of said issue of intestacy.

A rule to show cause why the writ should not issue was duly served, and each respondent has filed a return. Accompanying these returns are certain affidavits, which, however, it will not be necessary to set forth.

The facts necessary to be here stated are these:

Ellen M. Colton died in the District of Columbia on February 10, 1905, leaving both real and personal property in the District. On December 5, 1904, she executed a paper writing purporting to be her last will and testament.

On April 12, 1905, Walter J. Barnett, who was named as executor in said will, filed a petition in the Superior Court of the County of Santa Cruz, in the State of California, wherein he alleged that the decedent, Ellen M. Colton, left an estate in said County of Santa Cruz consisting of both real and personal property, and prayed that letters testamentary be issued upon said will. The only heirs at law and next of kin of said decedent were her daughter, Caroline Colton Dahlgren and her great granddaughter, Helen Margaret Beatrice Sacher, the child of a deceased granddaughter.

On November 21, 1905, the said Helen M. B. Sacher, by her guardian and next friend, Siegfried Sacher, filed in said court amended grounds of opposition to the probate of said will, and on November 30, 1906, the said Helen M. B. Sacher, through her father and next friend, filed her peti-

tion in the Supreme Court of the District of Columbia, holding a Probate Court for said District, setting forth that she was one of the heirs at law and next of kin of said decedent, and that the said Siegfried Sacher had been appointed her guardian by an order of the Superior Court of the county of Santa Cruz, in the State of California, and that the said William J. Barnett had filed in said Superior Court a paper writing purporting to be the last will and testament of the said decedent, Ellen Colton, and praying that the same be admitted to probate, and that the said Helen M. B. Sacher had filed a petition in said court in opposition to the probate of said will and for general relief, and further stating that the issues raised by said petition were then pending for trial in said Superior Court of the county of Santa Cruz, in the State of California, and praying that letters ad colligendum should be issued to some proper person in the District of Columbia for the purpose of preserving the assets of the estate of said decedent in this District.

On November 24, 1905, the Supreme Court of the District of Columbia, holding a Probate Court, appointed Charles A. Douglas and Arthur Mattingly collectors of the personal estate of said decedent in the District.

In November, 1906, the issues pending in said Superior Court of the county of Santa Cruz, in the State of California, came on for trial before said court and a jury, which, at the expiration of four months, resulted in a mistrial.

On November 2, 1906, said Helen M. B. Sacher, by her father and next friend, Siegfried Sacher, filed in the Supreme Court of the District of Columbia, holding a Probate Court, under a different docket number, a further petition for the appointment of collectors upon said estate of said decedent in the District of Columbia, and for the appointment of an administrator therein, and for the return of said personal property to the District of Columbia, which it is alleged had been received by the said William J. Barnett as special administrator under an appointment by said Superior Court of the county of Santa Cruz, in the State of California. Said petition further alleged that the said decedent, Ellen M. Colton, died in the city of Washington on the 10th day of February, 1905, and that she was domiciled in said city at the time of her death, and that she was unlawfully induced and required to sign a paper writing dated December 5, 1904, and that said paper writing was not her valid last will and testament, because she was not of sound and disposing mind and understanding at the time of its execution; that said paper writing was not properly executed as a will of real and personal property, and was procured by the fraud, coercion, and undue influence of Caroline Colton Dahlgren, the petitioner herein, and others. To this petition was annexed a photographic copy of said paper writing purporting to be the last will and testament of said decedent, Ellen M. Colton. The petition contained a prayer that issues be framed to determine the domicile of said decedent at the time of her death, and that the court would, for the purpose of testing the validity of said paper writing, receive said photographic copy as and for the original, and treat said petition as a caveat to said paper writing, and cause appropriate proceedings to be had in reference to said paper writing as would judicially determine its validity as

the last will and testament of the said decedent, Ellen M. Colton, or that the court, by reason of the facts stated, would ignore said paper writing and issue letters of administration upon said estate. Citation and rule to show cause why letters of administration should not be granted were duly served on the petitioner herein, who thereupon answered said petition and denied the allegations therein concerning the capacity of said decedent at the time she executed said paper writing, and the allegations of undue influence, fraud, and coercion, and averred that the legal domicile of the decedent at the time of her death was in the county of Santa Cruz, in the State of California, and set up the proceedings in said Superior Court, to which reference has heretofore been made.

On October 22, 1907, the said Helen M. B. Sacher, by her attorneys, filed a motion in the Supreme Court of the District of Columbia, holding a Probate Court, as follows:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,  
Holding Probate Court.  
In re Estate Ellen M. Colton, Deceased.  
Probate No. 14,004.

Comes now Helen Margaret Beatrice Sacher, by her attorneys, and moves the court to frame issues in the above entitled cause for trial, before a jury, to determine the domicile of the decedent, Ellen M. Colton, at the time of her death, as set out in the pleadings in this cause; whether the paper writing dated December 5, 1904, is the last will and testament of said decedent; and whether the same was duly executed according to law; whether, at the time of the execution thereof, said decedent was of sound and disposing mind, memory and understanding, and whether the execution thereof was procured by the fraud, coercion, or undue influence of any person or persons.

R. GOLDEN DONALDSON.  
B. W. PARKER.

October 22, 1907."

This motion came on to be heard before Mr. Justice Ashley M. Gould, of the Supreme Court of the District of Columbia, then holding a Probate Court, and on October 29, 1907, the said Justice refused all the issues requested in said motion save that for the determination of the domicile of the decedent, Ellen M. Colton, at the time of her death. The trial of that issue was fixed for the 11th day of November, 1907. Thereafter, on the 22d and 23d days of January, 1908, said issue was duly tried before a jury in Criminal Court, No. 2, Mr. Justice Barnard presiding, and it was determined that the domicile of the decedent, at the time of her death was the District of Columbia. Immediately thereafter the petitioner herein, through her attorneys, sent to the Superior Court of the county of Santa Cruz, in the State of California, to have said paper writing of December 5, 1904, purporting to be the last will and testament of said decedent, Ellen M. Colton, sent to the register of wills for the District of Columbia.

On January 31, 1908, by agreement of counsel, Mr. Justice Barnard, holding Criminal Court, No. 2 (he having become familiar with prior proceedings in the contest), heard a motion theretofore filed by said Helen M. B. Sacher, that an issue be framed for a trial by jury, whether the said decedent, Ellen M. Colton, died intestate.

Over the objection of the petitioner herein, the following order was passed:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In the matter of the Estate of Ellen M. Colton, Deceased.

No. 14,004. Ad. Doc.

Upon consideration of the motion this day filed in this case on behalf of the petitioner, Helen Marguerite Beatrice Sacher, for the framing of an issue as to the alleged intestacy of the decedent, Ellen M. Colton, and after hearing counsel for all the respondents, except Walter J. Bartnett, in opposition thereto, and upon its appearing to the court that notice of the calling of said issue at this time has been duly served upon counsel of record for said Bartnett, it is, this 31st day of January, 1908, ordered that said motion shall be granted, and issue as to intestacy shall be framed accordingly, unless, on or before the 14th day of February, 1908, the respondents, or some or them, shall formally offer for probate in this court, as the last will and testament of the said Ellen M. Colton, the instrument dated the 5th day of December, 1904, purporting to be the last will and testament. JOB BARNARD, Justice "

This order, on February 14, 1908, was extended to February 19, 1908, and on the 19th of February it was again extended to the 21st of February, 1908.

Said paper writing of December 5, 1904, purporting to be the last will and testament of the decedent, Ellen M. Colton, was duly filed with the register of wills for the District of Columbia on the 19th of February, 1908.

The petitioner herein, Caroline Colton Dahlgren, duly presented her petition to the Probate Court that said paper writing be admitted to probate and record as the last will and testament of the decedent, said Ellen M. Colton. With this petition was a renunciation by William J. Bartnett of his right to act as executor. The petition also contained the usual prayer that citation should issue, requiring Helen M. B. Sacher, who was the only other heir at law of the decedent, to show cause why such will should not be admitted to probate and record, and why letters of administration cum testamento annexo should not be issued. Said citation was duly issued and placed in the hands of the United States marshal for the District of Columbia for service.

Subsequently, on February 21, 1908, over the protest and exception of Caroline Colton Dahlgren, the petitioner herein, Mr. Justice Barnard entered the following order:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

In re Estate of Ellen M. Colton, Deceased.

Ad. No. 14,004.

Upon motion by counsel for the petitioner, Helen Marguerite Beatrice Sacher, and after hearing counsel for the respondents in opposition thereto, it is, this 21st day of February, 1908, ordered, that the following issue be and it is hereby framed for trial by jury in this case:

"Did the decedent, Ellen M. Colton, die intestate?" And it is further ordered that the trial of said issue be and it is hereby framed for the 11th day of March, 1908. JOB BARNARD, Justice."

It is contended on the part of the petitioner herein that should said issue of intestacy, as framed, be allowed to be tried "the effect thereof

would be to render inoperative the entire law relating to the probate of wills in the District of Columbia, and those provisions of law providing for a caveat of the same, and the framing of issues upon such caveats;" that inasmuch as the Code prescribes the proceedings to follow the filing of a will for probate, the court was without jurisdiction to frame said issue.

It is contended by counsel for the respondent, Helen M. B. Sacher, that the court has full power and authority, notwithstanding the filing of a petition for the probate of a will, to hear and determine through a trial by jury the question whether a decedent died intestate.

Jurisdiction to hear and determine all questions relating to the execution and to the validity of any and all wills presented for probate is, by section 117 of the Code, expressly conferred upon the Supreme Court of the District of Columbia, holding Probate Court. Section 273 of the Code expressly authorizes the same court to grant letters of administration upon satisfactory proof that the decedent died intestate. Obviously, therefore, the Supreme Court had general jurisdiction of the subject-matter of this controversy. Whether, upon the filing of the will, the court had authority summarily to determine whether the decedent died intestate, and thus indirectly challenge the validity of a will, it is not necessary now to determine for, if that court in proceeding under its said order of February 21, 1908, commits error, it may be corrected on appeal. Where such a remedy is open and available the writ of prohibition will not issue, since the writ can not be made to serve the purpose of a writ of error or certiorari. *Smith v. Whitney*, 116 U. S., 167. The court, having general jurisdiction over the subject-matter and over the parties, should be allowed to proceed to decision. In *re New York, etc., Steamship Co.*, Petitioner, 155 U. S., 523. Even assuming that the judgment of the court in the circumstances of the case will be void, it may nevertheless be corrected on appeal. *Alexander v. Crollott*, Justice of the Peace, 199 U. S., 580. That case involved five several actions of forcible entry and detainer instituted before said justice against Alexander and four other parties. Alexander claimed to be the owner of the property, and at the outset alleged lack of jurisdiction on the part of the justice, who, however, decided against him. He thereupon applied for a writ of prohibition, and from an order of the Supreme Court of the Territory quashing the writ he appealed to the Supreme Court of the United States. It was there held that inasmuch as an appeal might have been taken to the District court the writ was properly refused because "such writ will issue only where there is no other remedy." The court further said: "The fact that the judgment may have been void will not prevent its reversal upon appeal."

In the present case an application for a special appeal might have been made to this court, and, if granted, would have afforded the petitioner herein adequate relief. The fact that such appeal was not sought furnishes no ground for the issuance of a writ of prohibition, but, on the contrary, the fact that such appeal was open to the petitioner herein affords ground for the refusal of the writ.

It appearing that the Supreme Court of the District, holding Probate Court, had general jurisdiction over the subject-matter of the con-

troversy, and that, if error is committed, it may be corrected on appeal, the writ of prohibition is denied. The costs of this proceeding will be adjudged against Caroline Colton Dahlgren, the petitioner herein.

Writ of prohibition denied.

HENRY K. SIMPSON, APPELLANT,

v.

WILLIAM S. MINNIX.

SCIRE FACIAS; PROCEDURE TO OBTAIN; PAYMENT AS DEFENSE TO WRIT; ATTACHMENT; DISCHARGE IN BANKRUPTCY OF ONE OF TWO JUDGMENT DEBTORS.

1. A writ of scire facias for the revival of a judgment may be procured by the judgment creditor at any time within twelve years from the date of the rendition of the judgment; and it is not necessary, even if the judgment be above ten years' standing, that a motion for the writ, accompanied with affidavit of non-payment, shall be made by the plaintiff.
2. Satisfaction of the judgment, when not shown of record, is matter of defense in a proceeding by scire facias to revive the judgment.
3. Where a writ of attachment was issued on a judgment directed to certain persons as garnishees, who answered promptly denying any indebtedness to the judgment defendant, and no issue was joined upon their answer, held that upon the expiration of the time for joining issue on such answer the writ of attachment was abandoned and the action discontinued, and the plaintiff was not precluded by the issue of such attachment from suing out a scire facias within twelve years from the rendition of the judgment.
4. Where a writ of scire facias was issued against two joint judgment debtors, one of whom pleaded in defense a discharge in bankruptcy obtained since the judgment was rendered and upon that issue was dismissed by order of court, held that this did not have the effect of precluding the plaintiff from proceeding against the co-defendant, but plaintiff was entitled to have the judgment revived against the latter.

No. 1817. Decided March 10, 1908.

APPEAL by defendant from a judgment of fiat by the Supreme Court of the District of Columbia, at Law, No. 38,051, upon a writ of scire facias. Affirmed.

Mr. O. B. HALLAM and Mr. W. M. HALLAM for the appellant.

Mr. J. A. MAEDEL and Mr. MILTON STRASBURGER for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an appeal from a judgment of fiat entered in the Supreme Court of the District of Columbia against appellant and in favor of appellee. On June 14, 1895, the appellee recovered a judgment against the appellant and one Charles B. Fonda. On July 5, 1895, a writ of fieri facias was issued, which was returned nulla bona. On the same day, a writ of attachment was issued with interrogatories addressed to the Capital Trust Company and the People's Fire Insurance Company, to which the said garnishees answered denying any indebtedness to either of said defendants. On March 19, 1907, a writ of scire facias was issued and served upon both defendants for the purpose of reviving said judgment. The defendant Fonda filed a plea alleging, among other things, that, on February 25, 1904, he had been adjudged a bankrupt, and thereafter, on April 20, 1904, had been duly discharged from all debts provable under the bankruptcy act, including the judgment here in question. The facts set forth in



this plea were admitted by appellee, and judgment rendered therein in favor of the defendant Fonda. On April 11, 1907, counsel for appellant filed two pleas in abatement, to which appellee demurred. The court sustained the demurrer, to which ruling appellant did not reserve any exception. The court, however, granted appellant leave to plead in bar. Within the time allowed, appellant filed two pleas. The first plea, which challenges the existence of any such record as alleged, was not supported by an affidavit, as required by the rules of court, and was not sustained. The second plea alleges "that heretofore, to wit, on the 25th day of February, 1904, his co-defendant, Charles B. Fonda, filed in this court his petition in bankruptcy, No. 328, asking to be discharged of his debts as of that date, and was on said day adjudged by this court a bankrupt; that the plaintiff was named as one of the creditors and had actual notice, and through his attorney appeared at the first and only meeting of the creditors; and that such proceedings were had in said bankruptcy cause as that the said Fonda was duly discharged on April 20, 1904, from all debts provable under the bankruptcy act, and plaintiff's judgment was so provable. And so this defendant says that the said judgment sought to be revived in this cause can not be revived against the said Fonda, and, therefore, can not be revived against this defendant." The affidavit of appellant in support of said plea, in addition to referring to the bankruptcy proceedings aforesaid, sets forth "that there was no motion made to the court for the issuance of the scire facias, and no affidavit filed stating that the judgment had not been paid, notwithstanding the fact that more than ten years had elapsed since the judgment and before the issuance of the scire facias, and that, at the time the scire facias issued, there was still pending and undetermined a certain writ of attachment for the enforcement of the judgment summoning as garnishees the People's Fire Insurance Company and the Capital Trust Company, two corporations, to which the said garnishees had made answer and the plaintiff had never joined issue on said answers, and had not, and never has, discontinued said attachment, nor has the same in any way been disposed of." Appellant comes to this court upon the following assignment of errors: "1. The court erred in sustaining the demurrer to appellant's plea in abatement. 2. The court erred in granting fiat against the appellant. 3. Especially in granting such fiat when the sci. fa. was dismissed as to his co-defendant."

It is unnecessary to consider the first assignment, inasmuch as plaintiff failed to reserve any exception to the order of the court sustaining the demurrer to said pleas. This reduces the consideration of the case, as contended for by appellant in his brief, to the following questions: "Whether it is necessary, after ten years, for plaintiff to make affidavit of non-payment before he can have sci. fa. whether he can maintain the writ when the answer of a garnishee in the nature of a plea of not guilty has been made and no further steps taken, whether fiat can be had against one of two joint judgment debtors when the sci. fa. is dismissed as to the other." It is contended by appellant, that, since more than ten years had elapsed between the date of the judgment and the issuance of the writ of scire facias, the writ could

only be issued upon motion and affidavit of non-payment.

At common law, the writ of scire facias could only be issued, after ten years from the date of the judgment, upon a motion and an affidavit that the judgment had not been paid. It is insisted that this rule of the common law, having been adopted in Maryland, is still applicable in the District of Columbia. The Code of the District, sections 1212 to 1215, inclusive, provides that every common law judgment shall be enforceable for twelve years, and that during the twelve years, for the purpose of reviving the judgment, a creditor may issue a writ of scire facias "upon which a fiat shall be issued," which shall extend the effect and operation of the judgment for a period of twelve years. Section 1078 of the Code provides: "At any time during the life of the original judgment, the plaintiff may elect, instead of issuing execution thereon within the time allowed therefor, to issue a scire facias on the same and obtain a new judgment as aforesaid." We are of the opinion that these provisions completely abrogate the rule of the common law on the subject of the limitation and revival of judgments in the District of Columbia. Twelve years is fixed by statute as the life of a judgment under our Code, and at any time during that period the writ of scire facias may be issued by the creditor for the revival of the judgment by merely filing a praecipe with the clerk. The law establishes no particular date when the presumption of payment arises, and, inasmuch as every other vestige of the common law rule has been swept away by the above provisions of the Code, there is no apparent reason for holding, in the absence of statute or rule of court to that effect, that, after ten years, an affidavit of nonpayment must be made. This court has held that satisfaction of the judgment, when not shown of record, is matter of defense in a proceeding by scire facias on a judgment. *Starkweather v. West End Bank*, 21 App. D. C., 282; 31 Wash. Law Rep., 98. Payment having been held a proper matter for defense in a proceeding by scire facias before or after ten years, it can not consistently be insisted that nonpayment should affirmatively appear as a ground for the issuance of the writ.

It is also insisted by counsel for appellant that at common law two writs on the same judgment could not be in existence at the same time, and that, since the writ of attachment in the case at bar had not been returned, the writ of scire facias could not legally issue. Appellant relies upon the doctrine announced by this court in *Meloy v. Keenan*, 17 App. D. C., 235; 28 Wash. Law Rep., 886. In that case issue had been joined in a suit brought in the Supreme Court of the District in 1884. Nothing further was done by either party for fifteen years, when notice of trial was given, and the court, on motion, dismissed the suit for nonprosecution. The judgment of dismissal was reversed, the court saying: "There is no statute or rule of court having the force of a statute, requiring a cause to be brought to trial within a given period, under penalty of forfeiture of the right of further prosecution." But that is not this case. Here it was a writ of attachment directed to certain parties as garnishees. The parties promptly appeared and answered and no issue was joined upon their answer. We think that, at the expiration of the time allowed within which to join issue

on the return of the garnishees, the writ was abandoned and the action became discontinued.

It is generally held that, in the absence of a statutory limitation, an attachment return must be made within a reasonable time, or it will be held to be discontinued. In Wisconsin a delay of four months was held unreasonable, and the action became discontinued. *Hibbard v. Pettibone*, 8 Wis., 270. On the other hand, it was held in Kentucky that a failure for three months to make return could not be considered as an abandonment of the action. *Bourne v. Hocker*, 11 B. Mon. (Ky.), 23. In *Riordan v. Britton*, 69 Tex., 198, it was held that a return eleven months after the writ was issued was allowable. In that case, however, the court required a showing of due diligence in procuring the return. In the case at bar, the writ of attachment had been outstanding for almost eleven years. The only reasonable holding that the law will permit is to the effect that the writ was abandoned and the action had become discontinued.

This brings us to a consideration of the third complaint of appellant, the discharge of the co-defendant Fonda. It may be conceded that in the absence of statutory authority, a writ of scire facias issued against one of two joint judgment debtors is void, but a different proposition is here presented. The writ in this case was issued against both of the defendants, and both appeared in court, represented by the same counsel, and separately joined issue. Fonda set up his discharge in bankruptcy, and upon that issue was discharged by the order of the court. Counsel no sooner secured his discharge than he attempted to use the court's action as a ground for the discharge of appellant. A failure to issue the writ against all the defendants is such an act as would be chargeable to the plaintiff or judgment creditor, but the discharge of one of the joint defendants after they have answered to the writ is by a judgment of the court. This, we think, is a most important distinction. While it is a general rule that a party must recover against all the defendants or none, there are some exceptions to this rule recognized by the law. It is generally held that when a defendant, answering to the writ of scire facias, pleads matter which goes to his personal discharge, or any matter which does not go to the writ or to the nature of the writ, or pleads such matter as constitutes a bar to the action against himself only, and of which his codefendants could not take advantage, such a defendant may be discharged and the judgment revived against the other defendant or defendants. *Coleman v. Edwards*, 2 Bib. (Ky.), 595. Bankruptcy is a personal defense which a defendant may interpose to a writ of scire facias, and, when properly interposed, it is the duty of the court to discharge such defendant. *Freeman on Executions*, 320. The bankruptcy act of 1898, section 16, provides as follows: "*Co-debtors of Bankruptcy*.—The liability of a person who is a co-debtor with a guarantor or in any manner a surety for a bankrupt, shall not be altered by the discharge of such bankrupt." Here is direct statutory authority for the action of the trial judge in refusing to sustain the plea of appellant. The Supreme Court of the District of Columbia not only has jurisdiction in bankruptcy proceedings, but derives its jurisdiction generally from Congress. Hence, the statute above quoted has binding force upon that court, and it would have

been error for the court to have refused to obey its provisions.

There was no error in discharging the defendant Fonda and entering a judgment of fiat against the appellant. The judgment is affirmed with costs, and it is so ordered.

Affirmed.

O. P. M. BROWN, APPELLANT,

v.

EVA SLOCUM.

USURY; SUIT TO RECOVER; STATUTE OF LIMITATIONS.

1. Plaintiff obtained from defendant a loan of \$183.60 to be repaid in twelve equal instalments of \$15.30 each, and at the time of the loan \$48.60 was deducted ostensibly as commission but in reality as interest and therefore usurious. The twelve instalments were paid by plaintiff, and within a year after the last payment was made suit was brought to recover the \$48.60. To this suit the defendant pleaded the Statute of Limitations of one year prescribed by section 1181 of the Code. Held that the plaintiff's cause of action for recovery of the usurious payment did not accrue until the last payment made by her, and the bringing of suit within one year from that time was a compliance with the provision of section 1181 of the Code.
2. Statutes for the prevention of usury are to be construed in such a way, if possible, to carry into effect the intention of the law makers and to prevent evil-designed persons from violating the intent and escaping by the letter.

No. 1809. Decided March 10, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,159, entered upon an agreed statement of facts in suit to recover an alleged usurious payment of interest. Affirmed.

Mr. HOWARD BOYD for the appellant.

Mr. A. A. BIRNEY and Mr. H. F. WOODARD for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This suit was brought in the Supreme Court of the District of Columbia by appellee, plaintiff below, to recover from appellant the sum of \$48.60 alleged usury paid by appellee to appellant. The case was submitted to the court below on an agreed statement of fact which, among other things, sets out an application for a loan signed and sworn to by appellee, the material part of which is as follows: "Miss Eva Slocum, single, hereby applies to Citizens' Loan & Trust Co. for a loan of \$183.60 to be repaid in twelve equal instalments, to be secured by a deed of trust upon certain personal property to be mentioned therein. I hereby agree to pay interest on said loan at the legal rate and to pay Citizens' Loan & Trust Co. for services and expenses in investigating the application, in appraising the property, taking inventory of same, preparation of deed of trust, recording fees, and collecting payments, the sum of \$48.60 the said sum to be deducted from the loan." Appellee also gave the following note: "\$183.60. No. 280.

District of Columbia, October 31, 1905.

For value received I promise to pay to the order of Citizens Loan and Trust Company One Hun-

dred eighty-three and 66-100 dollars in the following manner, to wit:

\$15.30 January 4, 1906.

\$15.30 February 4, 1906.

\$15.30 March 4, 1906.

\$15.30 April 4, 1906.

\$15.30 May 4, 1906.

\$15.30 June 4, 1906.

\$15.30 July 4, 1906.

\$15.30 August 4, 1906.

\$15.30 September 4, 1906.

\$15.30 October 4, 1906.

\$15.30 November 4, 1906.

\$15.30 December 4, 1906.

At any place designed by the holder hereof with interest at the rate of six per centum per annum after maturity until paid.

Provided, That upon default in payment of any instalment when due the whole amount of this note then unpaid shall be and become immediately due and payable.

EVA SLOCUM."

It was also agreed that the \$48.60 was deducted at the time the loan was made, which it was agreed was "under the law in force in the District of Columbia, usury." The payments were all made when due. Appellant then interposed a plea that the payment complained of as usurious by appellee was made more than one year before the institution of this suit and is barred by the Statute of Limitations. Upon these facts judgment was rendered for plaintiff, from which this appeal is prosecuted.

It is admitted that the money sued for, which was retained at the time the loan was made under the subterfuge of a commission, was, "under the law in force in the District of Columbia, usury." This admission reduces the inquiry to one question: Is this claim barred by the Statute of Limitations? Section 1181 of the Code of the District provides: "If any person or corporation in the District shall directly or indirectly take or receive any greater amount of interest than is herein declared to be lawful, whether in advance or not, the person or corporation paying the same shall be entitled to sue for and recover the amount of the unlawful interest so paid from the person or corporation receiving the same, provided said suit is begun within one year from the date of such payment." The amount here sued for was deducted by appellant at the time the loan was made, October 31, 1905. On that date appellee gave her note for \$183.60, receiving only \$135 in return. She began paying the note on January 5, 1906, in monthly instalments of \$15.30. Payments were made for twelve successive months, the last payment, completing the full payment of the face of the note, being made on December 4, 1906. This suit was brought within one year from the date of the last payment, but more than a year after the amount sued for was deducted.

It is admitted that the sum deducted was usurious under the law, but inasmuch as it was paid more than one year before suit for its recovery was begun, appellant insists that recovery is barred by the Statute of Limitations. Counsel for appellant rely on the case of *Lawrence v. Middle States Loan, Building & Construction Co.*, of Hagerstown, Md., 7 App. D. C., 161: 23 Wash. Law Rep., 793. In that case the loan was for \$4,000, and there was deducted, under the guise of a commission, \$688. The loan was not paid

and on suit to recover it, it was sought to set off the \$688, under the plea of usury. On this point, the court said: "But allowing to the defendant's affidavit all the force and efficacy which the utmost liberality of construction would entitle it to receive, we find that it raises but the one single substantial issue of usurious interest taken or reserved by the plaintiff at the time of the making of the loan; and this is a defense which, under the decision of the Supreme Court of the United States in the case of *Carter v. Carusi*, 112 U. S., 478, can not be sustained or allowed. In that case the Supreme Court decided that, under the law in force in this District, when usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within twelve months to recover the amount of usury; and that the usurious interest could not be made the subject of set-off or counter claim, when after the lapse of twelve months suit is instituted for the recovery of the principal claim." But that is not this case. Here the appellant paid the full face of the note, and has adopted the only remedy offered by the law to recover usury by bringing suit for the amount of the interest paid. We think her cause of action did not accrue until the last payment was made. Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest. This time did not occur until within less than a year of the bringing of this suit. In *McBroom v. Scottish Mortgage & Land Investment Co.*, 153 U. S., 318, 328, the question there under consideration was whether in an action for the penalty prescribed by a statute of New Mexico, the lender could be held liable so long as the principal debt, with legal interest thereon, remained unpaid. The court, speaking through Mr. Justice Harlan, said: "We are of the opinion that this question must be answered in the negative. While, under the statute, the mere *charging* of usurious interest may be a misdemeanor for which the lender can be fined, whether such usurious interest is or is not collected or received, the borrower has no cause of action until usurious interest has been actually collected or received from him. Such is the mandate of the statute. And interest can not be said to have been collected or received, in excess of what may be lawfully collected and received, until the lender has in fact, after giving credit for all payments, collected or received more than the sum loaned, with legal interest. Such, in our judgment, is the true construction of the statute of New Mexico. In this view, the limitation of three years, within which the borrower may sue for double the amount of usurious interest collected and received from him does not commence to run, and, therefore, does not accrue, until the lender has actually collected or received more than the original debt with legal interest. These conclusions are supported by the adjudged cases."

No more wholesome laws appear on the statute books than those for the prevention of usury. They look to the protection of a class of borrowers who can ill afford to be subjected to the mercy of the Shylocks of trade. If the defense here made should be sustained, it would put in operation a system whereby loans could be negotiated in such a manner as to practically nullify the usury laws of the

District of Columbia. If the usurious amount could be deducted in advance and security taken providing for payments extending beyond the period of a year, so that the amount collected within a year from the date of the giving of the note and the making of the deduction would not be equivalent to the amount of the loan and legal interest, the party subjected to the usury would be powerless.

It is unnecessary to discuss the effect of a deduction of this kind under the guise of a commission, as in this case usury is admitted. It is sufficient to intimate that statutes of this kind should be construed in such a way, if possible, as to carry into effect the intention of the law makers, and in such a way as to prevent evil designed persons from violating the intent and escaping by the letter. The judgment is right, and must be affirmed with costs, and it is so ordered.

Affirmed.

### Supreme Court of the District of Columbia.

THE UNITED STATES EX REL. ELIZABETH SOUSA, WIDOW AND EXECUTRIX OF ANTONIO SOUSA,

v.

VESPASIAN WARNER, COMMISSIONER OF PENSIONS.

MANDAMUS; WITHHOLDING OF MONETARY ALLOWANCE UNDER SEC. 4756 R. S.

Where an allowance of \$19.50 per month made to a member of the Marine Corps under sec. 4756 R. S., in lieu of his being provided with a home in the Naval Asylum, was discontinued by the then Commissioner of Pensions on his being granted a pension under the general law, held, upon a petition for mandamus, to compel the present Commissioner of Pensions to pay over to the personal representative of such pensioner the amount of such allowance from the date of its discontinuance to his death, that while the withholding of such allowance was without authority of law and the amount of it a debt due the estate of decedent, there is no specific authority justifying the present Commissioner of Pensions in making good the wrongful act of his predecessor; and the writ of mandamus denied.

No. 50,181 Law. Decided March 23, 1908.

HEARING on a petition for a writ of mandamus against the Commissioner of Pensions. Dismissed.

Mr. J. C. DE PUTRON and Mr. LEMUEL FUGITT for the relator.

Mr. D. W. BAKER and Mr. STUART MCNAMARA for the respondent.

Mr. Justice BARNARD delivered the opinion of the Court:

The relator in this case files her petition for a writ of mandamus to be issued against the defendant, commanding him, as Commissioner of Pensions, to pay to her the sum of \$19.50 per month from the 4th day of March, 1886, up to the 27th day of April, 1892, inclusive, the same being moneys which were due to her deceased husband under the certificate of the Secretary of the Navy, and which payments were wrongfully and without authority of law withheld from her late husband by the then Commissioner of Pensions.

The petition states that Antonio Sousa died April 27, 1892, and that the relator has qualified as his executor under his will; that the said de-

cedent served in the Marine Corps of the United States for many years, and became entitled to \$19.50 per month, under the provisions of section 4756 of the Revised Statutes of the United States, and the certificate of the Secretary of the Navy, from March 4, 1879; that on April 24, 1886, he received a certificate as pensioner under the general law, and the allowance of \$19.50 per month was discontinued by order of the then Commissioner of Pensions; and that the payments received by reason of said monetary allowance from the 7th day of May, 1885, to March 4, 1886, were deducted from the amount otherwise payable under the general pension certificate.

After the death of her husband the relator applied for a pension as a widow, and she received such pension, together with an allowance of the regular pension which had been so withheld from her husband, namely, from May 7, 1885, to March 4, 1886; and the sum was allowed to her under the rulings of the Secretary of the Interior and the Commissioner of Pensions.

To this petition an answer has been filed by the Commissioner of Pensions, in which the historical averments of the petition are admitted, and the respondent says therein that Antonio Sousa, the husband of the relator, who had been a musician in the Marine Corps, obtained a certificate from the Secretary of the Navy, entitling him to a monetary allowance of \$19.50 per month, from April 17, 1879, in lieu of being provided with a home in the Naval Asylum in Philadelphia; and that under the provisions of section 4756, R. S. U. S., said monetary allowance was paid in quarterly instalments.

The answer then recites the application for a pension under the general law, and the withholding of the \$19.50 per month, under section 4756, and the death of Antonio Sousa, and the application for a pension by the widow, and the payment to her of the general pension money, which had been deducted from the pension of her husband on account of said monetary allowance.

The respondent claims in his answer that said allowance to Antonio Sousa was personal to him, and intended only as a substitute for his lodging and care in the Naval Asylum in Philadelphia; that it was a life annuity peculiar to him, and died with him; that therefore the relator is not entitled to have that money paid to her, either in the capacity of widow or of executrix of her deceased husband, because at no time during his life did her husband complain of the suspension of said allowance, and there was no claim pending for the same when he died; that the said allowance is in no sense pension money, and can not be paid under act of March 2, 1895 (28th Statutes at Large, 964), which is the only existing law regulating the payment of accrued pensions, and which relates only to the general pension money, and does not relate in any wise to the allowances granted under section 4756.

He therefore avers that there is no authority in law for the payment to the relator of any moneys which she claims in this proceeding.

The respondent further claims in said answer that there is no jurisdiction in this court to grant the writ of mandamus, or to entertain a suit against the Commissioner of Pensions, in the absence of any law authorizing the payment of the money claimed by the relator herein; and further, that the granting of the pension to

Antonio Sousa was a matter in the discretion of the Commissioner of Pensions; and a condition of that pension being that the monetary allowance of \$19.50 should be withheld, that this court has no jurisdiction to revise such decision, even if the same should have been erroneous, or without authority of law.

To this answer the relator has filed a general demurrer, claiming that the answer is bad in substance; and on this demurrer the case has been argued, and submitted for the consideration of the court.

It appears from the opinion of the Assistant Secretary of the Interior, of February 12, 1902, that the withholding of the said monetary allowance from the said Antonio Sousa was decided to be without authority of law; and it is intimated in said opinion that if said Antonio Sousa was still living, he might properly apply to the Commissioner of Pensions for the payment of said money so wrongfully withheld, and the certificate of the Secretary of the Navy would be a sufficient warrant to the Commissioner for making such payment; but that there is no authority in law for the present Commissioner of Pensions to pay the said money to the widow of Antonio Sousa as such, or to his personal representative, as assets of his estate.

The Secretary also holds in said opinion that the Secretary of the Navy is the only one vested by law with authority or jurisdiction to decide who, if any one, shall receive the said moneys.

It seems clear to me that the estate of Antonio Sousa would have been enriched to the extent of the funds now asked for by his executrix, if the former Commissioner of Pensions had discharged his duty in accordance with the law, as now construed by the said opinion of the Secretary of the Interior; and also it seems to me that if the said construction of said section 4756 is the correct one, the result is that the Government, through its officers, was properly authorized to pay the said money at any time during the lifetime of said Antonio Sousa; that he having died before such payment was made, the right to receive such payment would go by operation of law to his personal representative, to wit, his executrix, in the absence of any specific direction by statute that the funds should be paid to any other person.

Furthermore, it does not seem to me that the Government of the United States can withhold moneys which were lawfully due and payable to the said Antonio Sousa, and thereby lessen his estate as a citizen, and increase its own estate, without some authority of law.

The difficulty, however, in this case, as it seems to me, is the want of any specific appropriation of money by Congress with which the Commissioner of Pensions can now pay this claim. It is not money which can properly be payable for army and navy pensions, as described in the pension appropriation act of March 4, 1907 (34th Statutes at Large, 1406), which is the act by virtue of which pensions are paid by the Commissioner of Pensions.

This fund, which should have been paid to the testator in his lifetime, is not payable to an invalid, widow, minor child, or dependent relative, army nurse, or any other pensioner now on the rolls, or who may hereafter be placed thereon, as seems to be required under said appropriation act. Neither is it "accrued pension," which is

payable under the terms of the said act of March 2, 1895. It is a gross sum which has accumulated in the possession of the United States Government by the unlawful act of withholding the same from the said Antonio Sousa by an agent who is no longer in office. The Government has profited by that act to the extent of this fund, and the estate of said Sousa has been diminished to that extent; and in my judgment the executrix has a just claim against the United States for the same, which probably may be collected by a suit in the Court of Claims, under laws now existing, as intimated by the case of *Bowen v. United States*, 100 U. S., 508.

The proceeding by way of mandamus, however, in order to be effectual, must clearly show a case where the respondent has a plain ministerial duty to perform, which he declines to perform; and if the court has any doubt as to the legal authority of the defendant to perform the act asked for, it will not require its performance by the writ of mandamus.

The Attorney-General has decided in an opinion dated December 23, 1903 (25th vol. Opinions of Attorney-General, 85), that in his judgment there is no authority of law for the payment to the personal representative of a deceased beneficiary of moneys which may have accrued under said section 4756, between the date of the last quarterly payment and the date of death.

These moneys are not "pensions" in the ordinary acceptance of the word; and while they are not therefore payable by the Commissioner of Pensions under the act of March 2, 1895 (28th Statutes at Large, 964), they are, in my judgment, a debt due the estate of the deceased, and the right to recover the same is vested by law in his personal representative.

Inasmuch, however, as no specific authority can be pointed out which authorizes or justifies the present Commissioner of Pensions to make good any wrongful act of his predecessor in withholding this fund from the said Antonio Sousa in his lifetime, I must decline to issue the writ of mandamus as prayed. The demurrer to said answer will therefore be overruled.

**Principal and Surety—Discharge of Surety.**—A contract of the indorsers of notes held one of suretyship, and a verdict in favor of the maker on his plea of failure of consideration extinguishes the obligation of the sureties. *Schlittler & Johnson v. Deering Harvester Co.* (Ga.), 59 S. E. Rep., 342.

**Paupers—Fraud.**—In the absence of proof to the contrary, it will be presumed that a person received into a public charitable institution truthfully answered questions asked of her touching her property. In *re Carroll's Estate*, 106 N. Y. Supp., 681.

**Partnership—Commingle of Funds.**—Commingle of funds of a firm with individual funds, by a surviving partner, held not conversion. *American Bonding Co. v. State* (Ind.), 82 N. E. Rep., 548.

**Principal and Agent—Authority of Agent.**—Where defendant gave its salesman permission to reduce a price given in an estimate, it did not confer authority on the salesman to bind defendant on a contract with plaintiff. *Falihee v. John Simmons Co.*, 106 N. Y. Supp., 764.

## Recent Legal Decisions.

[From Bradstreet's.]

**Agency—Sub-agent—Principal's Liability.**—The Supreme Court of Iowa held, in the case of *Merritt v. Huber*, that where one employed by the defendant as general help on her farm and authorized to cut and haul logs to the plaintiff's sawmill, employed another to help cut and haul the logs, such other was the agent of the defendant whose knowledge of the plaintiff's rule that yard logs or logs containing iron would not be sawed, would be imputed to the defendant, rendering her liable for the breaking of a saw, due to its striking iron in a yard log delivered. The court said that it was well settled that an agent with authority may appoint a sub-agent, whose knowledge will be imputed to the principal.

**Bank—Deposit—Appropriation.**—The case of *Cherry, Receiver, v. City National Bank of Kansas City, Mo.*, just decided by the Supreme Court of the United States, involved the question whether the funds of one bank when deposited in another bank can be appropriated to pay the notes of the depositing bank. It appeared in this case that the Capital National Bank of Guthrie, Okla., had money on deposit in the Kansas City bank, while the latter also held notes for money advanced to the president of the Oklahoma bank, and when the latter bank failed, some years ago, appropriated the amount to its credit in payment of the president's account. The decision of the court was favorable to the Kansas City Bank.

**Insurance—Agent—Assignment.**—A policy of fire insurance provided that it should be void in case of the sale of the property or that any incumbrance should be placed thereon without its consent in writing entered upon the policy at its office in the city of Chicago. The Kentucky Court of Appeals held, in the case of *Home Insurance Company of New York v. Myers*, that a sale of the property by the insured and an assignment of the policy made with the consent of the local agent who wrote the policy, was a waiver of the provisions of the policy requiring such consent and indorsement thereon at the Chicago office and made the company liable to the purchaser upon its loss by fire, as in such case the knowledge and consent of the agent was imputed to the company.

**Safety Appliances—Railroads Within State.**—The United States Circuit Court of Appeals for the Eighth Circuit held, in the recent case of the *United States v. Colorado & Northwestern Railroad*, that the federal safety appliance acts apply to and govern a railroad company engaged in interstate commerce operating entirely within a single State independently of other carriers; that every carrier who transports such goods through any part of a continuous passage from a commencement in one State to a destination in another, is engaged in interstate commerce, whether the goods are carried upon through bills of lading or are rebilled by the several carriers, and that Congress may lawfully affect intrastate commerce so far as necessary to regulate effectually and completely interstate commerce because the constitution reserved to Congress plenary power to regulate interstate and foreign commerce, and the constitution and the acts of Congress in pursuance thereof are the supreme law of the land.

**Lost Bank Check—Recovery.**—The Supreme Court of Minnesota held, in the case of *First National Bank of Belle Plaine v. McConnell*, that the owner of a bank check which was lost without his fault before presentment to the bank on which it was drawn, might recover thereon against the drawer of the same upon filing a proper indemnity bond, as required by the statute. The court said that the giving of a bank check by a debtor for the amount of his indebtedness to the payee is not, in the absence of express or implied agreement to that effect, a payment or discharge of the debt; that the presumption is that the check was accepted conditionally and the debt is not discharged until the check is paid, and whether a check for a part of a bank deposit operates as an equitable assignment between the drawer and the payee or not, the drawer, the check not having been accepted as unconditional payment, is liable to the owner, where by reason of its loss, presentment to the bank for payment is rendered impossible.

**Insurance—Accident—Stipulation—Notice.**—An accident policy against bodily injury provided that written notice thereof should be given within ten days of the event causing the injury. The insured under the policy met with an accident which he did not consider of any account, on July 7. He continued in his usual health until August 7, when he was confined to his bed, and he died four days later. Notice of the injury was not given to the insurer until after the death of the insured. The Supreme Judicial Court of Massachusetts held (*Hatch v. United States Casualty Company*) that the failure to fix the liability by giving notice within ten days of the accident freed the insurer from liability. The court said: "If it be said, as it sometimes is, that such a defense is purely technical, the answer, if one is needed, is that the provision for notice is of the essence of the contract, and that it is manifestly an important provision for the protection of the insurer against fraudulent claims, and also against those which, although made in good faith, are not valid."

## Cases of Interest.

**Automobiles as Household Effects.**—The United States Circuit Court of Appeals for the Second Circuit in *Hillhouse v. United States*, 152 Federal Reporter, 163, holds that automobiles come within the classification of "household effects," under the tariff act of July 24, 1897. This decision is largely based on the case of *Arthur v. Morgan*, 112 U. S. 495, 5 Supreme Court Reporter, 241, 28 Lawyers' Edition, 825, wherein the United States Supreme Court held that carriages were properly classified as "household effects."

**Former Jeopardy—Application of "Same Transaction Test."**—The case of *Fews v. State* (Ga. Ct. App.), 58 Southeastern Reporter, 64, holds that where defendant was accused of shooting two different persons in rapid succession, who had made no joint attack upon him, two distinct crimes were committed, and that a conviction for one was no bar to a prosecution for the other. A similar question arose in *Burnam v. State*, Id., 683, where the State court, after setting out a hypothetical case, applied the same principle.

**Damages for Pain and Anguish of Decedent.**—A watchman on a drawbridge was struck by an engine and knocked into the stream beneath and drowned. The evidence showed that when struck he fell on an iron girder, parallel with the bridge, with such force that he bounced; that he then dropped his flag, threw up his arms, and fell into the water. The Supreme Court of Arkansas held in the case of *St. Louis, I. M. & S. Ry. Co. v. Stamps*, 104 Southwestern Reporter, 1114, that in this instance the facts were sufficient to show an appreciable interval of conscious suffering and to warrant a recovery of \$500 therefor.

**Conversation Over Telephone.**—The admissibility in evidence of a telephone conversation was considered in *Holzhauser v. Sheeny*, 104 Southwestern Reporter, 1034. The attorney for plaintiff, having ascertained defendant's number from the telephone directory, called up and conversed with her. It was not shown that he knew her voice or that he asked her name. The Kentucky Court of Appeals held that the subject of the conversation and the circumstance of defendant's answering at the number of her address were sufficient identification to charge her as being the person with whom the conversation was had.

**Injunction to Restrain Acts of Officers of Labor Union.**—An injunction to restrain the officers of a labor union from violating its contract with an employers' association was granted in *Barnes v. Berry*, 156 Federal Reporter, 72. Defendants demanded the eight-hour day and the closed shop. The court held the "closed shop" to be contrary to public policy and that the demand for the immediate adoption of the eight-hour day was violative of the contract. The court granted an order restraining defendants from unlawful use of their influence and power in inciting a strike.

**Misconduct of Plaintiff as Ground for New Trial.**—During the argument of defendant's counsel near the close of the trial in a personal injury case, *Connell v. Seattle R. & S. Ry. Co.*, 92 Pacific Reporter, 377, plaintiff gave way to her feelings and wept and trembled in the presence of the jury. The Supreme Court of Washington said that it was not improbable that her act, caused by her nervousness and the criticisms of the defendant's attorney, was unavoidable. The judgment of the trial court denying a new trial was affirmed.

**Principal and Agent—Injury to Third Person.**—That the owner of an automobile loaned it to another held insufficient to charge the owner with the borrower's negligence resulting in the death of a third person. *Lewis v. Amorous* (Ga.), 59 S. E. Rep., 338.

**Principal and Agent—Notice to Agent.**—Where a mortgagor told the agent of the mortgagee of a defect in the title at the time the mortgage was executed, notice to the agent was notice to the principal. *Connolley's Exr. v. Beckett* (Ky.), 105 S. W. Rep., 446.

**Railroads—Contributory Negligence.**—Plaintiff, injured while endeavoring to force his horses past the carcass of a horse on defendant's right of way near a highway, held guilty of contributory negligence as a matter of law. *Louisville & N. R. Co. v. Armstrong* (Ky.), 105 S. W. Rep., 473.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

**Basil D. Boteler, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a., on the estate of *Mary A. E. Stockton*, otherwise known as *Marian E. Stockton*, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 25th day of March, 1908. *SALLIE EVANS BOOKER*, by *Basil D. Boteler, Attorney*. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,121. Administration. [Seal.] 13-3t

**Lester & Price, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of *Ferdinand Miller*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of March, 1908. *MARGARET MILLER*, 2230 Brightwood ave. N. W.; *JOHN SHUGHRUE*, 818 M st. N. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,123. Administration. [Seal.] 13-3t

**Howard Boyd, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of *Herman H. Goetz, Deceased*.  
Administration No. 15,048.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by *Jennie Goetz*, it is ordered this 25th day of March, A. D. 1908, that *Marie Goetz*, *Sallina Goetz*, *Albert Goetz*, and *Carroll Goetz*, and others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. *ASHLEY M. GOULD*, Justice. A true copy. Attest: *James Tanner*, Register of Wills. 13-3t

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## Legal Notices.

W. C. Balderston and Barnard & Johnson, Solicitors  
In the Supreme Court of the District of Columbia.  
Robert H. Kaiser Complainant v. Julius A. Kaiser  
et al., Defendants. No. 27,292. In Equity.

Upon consideration of the report of Walter C. Balderston and Edgar B. Sherrill, trustees, that they have sold the lots numbered 15 and 16 in Shepherd's subdivision of square west of square 628, improved by premises Nos. 821 and 823, N. J. Ave. N. W., to Philip Schwartz, for the price of sixty-five hundred dollars (\$6500.00), payable all cash. It is, this 24th day of March, A. D. 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 24th day of April, 1908. Provided a copy of this order be published once a week for three (3) weeks before said date.

[Seal] in The Washington Law Reporter and The Evening Star. ASHLEY M. GOULD, Justice.  
A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-St

Walter C. Balderston, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Marianna M. Van Why, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. EMMA E. NORRIS, 1004 Mass. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,066. Administration. [Seal.] 18-St

Darr, Peyser & Curtin, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louis Schmidt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. AMELIA BARBARA SCHMIDT, 702 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,181. Administration. [Seal.] 18-St

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frank Courtis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. MAUDE C. COURTIS, The Cairo, Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,046. Admn. [Seal.] 18-St

Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob Veihmeyer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. JACOB O. VEIHMAYER, 438 10th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,068. Administration. [Seal.] 18-St

## Legal Notices.

P. R. Hillard, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Patrick Reddington, Deceased.  
No. 15,087. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with the will annexed on said estate, by Bridget Durken, it is ordered this 24th day of March, A. D. 1908, that Margaret McGowan, of Cross Molina, Mayo County, Ireland, and John Reddington, of Killala, Mayo County, Ireland, and all others concerned, appear in said court on Tuesday, the 28th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-St

Hugh T. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Bridget M. Wardell, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1908. PETER J. MCINTYRE, by Hugh T. Taggart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,586. Administration. [Seal.] 18-St

Henry W. Sobon, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Denis J. Stafford, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. HELEN C. WHITTON, 918 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,004. Administration. [Seal.] 18-St

William A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Theodore J. Mayer, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 21st day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of March, 1908. AMERICAN SECURITY AND TRUST CO., by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,847. Administration. [Seal.] 18-St

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**Legal Notices.**

Glenn E. Husted, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of David R. Whitcomb, Deceased.  
No. 15,112. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Harriet N. Whitcomb, his widow, it is ordered this 24th day of March, A. D. 1908, that Curtis Edwin Whitcomb, Clarence Eugene Whitcomb, Charlotte Elizabeth McConnell, Carrie May Bennett, Walter Allen Whitcomb, Myron Whitcomb, Olive May Cleveland, Ruth Ann Robinson, Hattie M. Park, Elma Green, and all others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

[Seal] fore said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-3t

Wm. H. and Chas. Linkins, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James H. Byram, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of March, 1908. GEO. W. LINKINS, 800 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,136. Administration. [Seal.] 12-3t

**SECOND INSERTION.**

J. B. Archer and W. W. Stewart, Solicitors  
In the Supreme Court of the District of Columbia.  
Emily M. Dunbar v. Murray S. Dunbar et al.  
No. 17,222. Equity Docket No. —

The object of this suit is to obtain a divorce from the bond of matrimony between the complainant and the defendant, Murray S. Dunbar, because of the infidelity of said defendant. On motion of the plaintiff, it is, this 13th day of March, A. D. 1908, ordered that the defendant, Murray S. Dunbar, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. By the

[Seal] Court: ASHLEY M. GOULD, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

John Ridout, Attorney  
In the Supreme Court of the District of Columbia.  
Edgar Buxton, Plaintiff, v. Channing Rudd, Defendant. At Law, No. 49,147.

The object of this suit is to recover seventeen hundred dollars and interest and to have judgment of condemnation of certain shares of stock of the Intercontinental Correspondence University, property of the defendant, levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 13th day of March, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred C. O'Connell, Asst. Clerk. 12-3t

[Seal] Justice blanks of every description for sale at this office.

**Legal Notices.**

Wm. Stone Abert, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia ancillary letters testamentary on the estate of Mary E. Brown, late of the State of Virginia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of March, 1908. GLENN BROWN, 806 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,050. Administration. [Seal.] 12-3t

Darr, Peyser & Curtin, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry F. Anderson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of March, 1908. WILLIAM A. ANDREWS, 1621 Newton st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,056. Administration. [Seal.] 12-3t

H. T. Winfield, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James R. Gow, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1908. ROBERT GOW, 1610 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,119. Administration. [Seal.] 12-3t

Lyon & Lyon, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of David Roberts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of March, 1908. CHARLES F. PARKER, 57½ L st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,941. Administration. [Seal.] 12-3t

J. H. Taylor, Solicitor

In the Supreme Court of the District of Columbia.  
Ella L. Warfield v. Unknown Heirs, Devisees, and Alienees of Andrew Schofield, or Schofield, and Minnie Fuller. Equity, No. 27,621.

The object of this suit is to establish complainant's title by adverse possession to lots 11, 12, and 13 of Fuller's subdivision in square 60. On motion of the complainant, it is, this 12th day of March, 1908, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during the three months in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-3t

[Seal] mar. 20, 27; apr. 19, 26; may 24, 31

**Legal Notices.**

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John C. B. Davis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. FREDERICA GORE DAVIS, 1621 H St., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,998. Admn. [Seal.] 12-31

**George E. Sullivan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of James F. Scaggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. EMMA L. EVERETT, 138 12th St. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,187. Administration. [Seal.] 12-31

**Oscar Luckett, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Anna M. Devote.**  
**No. 13,698. Administration Docket —**  
 Upon consideration of the report of Oscar Luckett, administrator, filed herein on March 16, 1908, reporting the sale of lots (41) forty-one and (42) forty-two in Anna M. Devote's subdivision of part of square 825, as per plat recorded in liber 28, at folio 85, of the records of the office of the surveyor of the District of Columbia, to James Kane for the sum of thirty-three hundred (\$3,300) dollars, it is by the court, this 16th day of March, A. D. 1908, ordered that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before April 17, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named day in The Washington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 12-31

**Edwin Forrest and R. E. Mattingly, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**John Maxey, Annie Dugan and William A. Carson,**  
**v. Anne T. Bramhall et al.**  
**No. 27,623. Equity Docket, No. 61.**  
 The object of this suit is to perfect the title of the complainants by adverse possession, to part of lot No. 28 in square No. 539, in the city of Washington, District of Columbia, described as follows: Beginning for the said part at the distance of 16 feet from the southeast corner of said lot on south third street; thence running north along the front line of the lot 18 feet; thence west 100 feet to the rear line of said lot; thence south along said rear line 18 feet; thence east 100 feet to the place of beginning on south third street, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the plaintiffs, by their solicitors, R. E. Mattingly and Edwin Forrest, it is, this 16th day of March, A. D. 1908, ordered that the defendants, Frank J. Bramhall and John T. Bramhall, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in [Seal] The Washington Law Reporter and The Washington Herald before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-31

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Herbert & Micon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Letitia Tyler Semple, Deceased.**

No. 15,093. Administration Docket —  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Elizabeth Denison Williams, of Washington, D. C., it is ordered, this 16th day of March, A. D. 1908, that Mrs. Albert Goodwin, Robinson Tyler, Mrs. T. Gardiner Foster, Robert Tyler, Miss Mattie Tyler, James Tyler, Miss Martha T. Tyler, Mrs. Louis G. Young, Robert T. Waller, Letitia T. Tyler, Lewis Jones, Miss Mary Waller, John Tyler Waller, Miss Grace Tyson, Mrs. Gatewood, and Allan Tyson, and all others concerned, appear in said court on Tuesday, the 21st day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-31

**Geo. Francis Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Lulu Tippin, Plaintiff, v. Alice C. Burr et al., Defendants.**  
**No. 27,612. Equity Docket No. 61.**

The object of this suit is to obtain a decree for the partition in kind or by means of a sale of certain real estate in the District of Columbia, of which Richard B. Cain died seized, namely: Part of lot 19 in Rothwell and Naylor's subdivision of square 425, known as premises 1159 Eighth street, N. W., in the city of Washington; part lot 23, all of lot 29 and part lot 30 in King's subdivision of "Long Meadows," known as premises 1242, 1244 and 1246 Bladensburg road, and lot 34 and part lot 35, in said King's subdivision, reference being made to the bill of complaint for a more complete description of all of said real estate. On motion of the plaintiff it is, this 16th day of March, A. D. 1908, ordered that the defendants, Alice C. Burr, Lillie Dagen and Sallie Palmer, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star of Washington before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 12-31

**W. L. Pollard and M. N. Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**George A. Scott, Complainant, v. Henry Schroeder et al., Defendants. Equity, No. 27,627.**

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 73 feet front on 13 by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in liber 829, folio 89 et seq., of the land record of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof for more than twenty-two years. On motion of the plaintiff, it is, this 18th day of March, A. D. 1908, ordered that the defendants, Henry Schroeder, if living, or, if dead, the unknown heirs, alienees, and devisees of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in The Washington Law Reporter [Seal] and The Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. True copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 20, 27; apr. 8, 15; june 12, 19.

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street, N. W.

**Legal Notices.****H. Winship Wheatley, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Josephine Guest, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1908. JNO. B. COLLAHAN, JR., 1011 Chestnut st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,922. Administration. [Seal.] 12-St

**Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Michigan, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry H. Clapp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 16th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 16th day of March, 1908. ALBERT B. RUFF, Natl. Bank of Washington; GEO. R. SPALDING, Jones Bldg. Detroit, Mich. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,839. Administration. [Seal.] 12-St

**Harry S. Welch, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James E. Nichol, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1908. JAMES W. NICHOL, 506 8th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,141. Admn. [Seal.] 12-St

**Blair & Thom, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah S. Sampson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. MARY C. SMITH, 1622 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,989. Administration. [Seal.] 12-St

**Newton & Gillett, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Lucille Carpenter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 9th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. SARAH A. CARPENTER, 207 2d st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,077. Administration. [Seal.] 12-St

**Legal Notices.****Blair & Thom, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of Allan Gilmour, late of the city of Washington, D. C., deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 10th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under the hand of said administrator this 17th day of March, 1908. THE MORTON TRUST COMPANY, 38 Nassau st., New York, N. Y., by Blair & Thom, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,807. Administration. [Seal.] 12-St

**William D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Walter Paris, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday the 20th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of March, 1908. NATIONAL SAVINGS AND TRUST COMPANY, T. R. Jones, Pres., by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,152. Administration. [Seal.] 12-St

**E. H. Thomas, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles Schnebel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. EMMA SCHNEBEL, 403 Fla. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,120. Administration. [Seal.] 12-St

**Ellen S. Mussey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Libbey M. Porter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of March, 1908. ELLEN S. MUSSEY, 618 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,123. Administration. [Seal.] 12-St

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 618 Fifth Street N. W.

**Legal Notices.****THIRD INSERTION.**

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary J. Kennedy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of March, 1908. CHARLES W. DARR, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,990. Administration. [Seal.] 11-3t

Wm. M. Lewin, Solicitor

In the Supreme Court of the District of Columbia.  
Caroline Howes Lycett, Complainant, v. Edward H. Lycett et al., Defendants. Equity, No. 37,455.

Ordered this 11th day of March, A. D. 1908, that the sale made and reported by William M. Lewin, trustee for the sale of certain real estate of Rebecca Lycett, deceased, which is in these proceedings mentioned and described, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 13th day of April next. Provided a copy of this order be published in The Washington Law Reporter once a week in each of three successive weeks before said last mentioned date. The report states the amount of the sale

[Seal] to be \$2,015. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 11-3t

G. Thomas Dunlop, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George T. Dunlop, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 11th day of March, 1908. EMILY REDIN DUNLOP, 8102 Q st.; G. THOMAS DUNLOP, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,070. Administration. [Seal.] 11-3t

Wilson & Barksdale, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of George A. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of March, 1908. MAYRIE STOUT JONES, care of Wilson & Barksdale, 504 E st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,101. Administration. [Seal.] 11-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert S. Lytle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of March, 1908. AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,100. Administration. [Seal.] 11-3t

**Legal Notices.**

Ellen S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Christian Hange, Deceased.

No. 15,082. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Ellen S. Mussey, it is ordered, this 12th day of March, A. D. 1908, that Fra Helga Nicolaysen, Fra Anna Krohn and Fra Rustad, and all others concerned, appear in said court on Tuesday, the 14th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

Sleman & Lerch, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Minna Wright, Deceased.

No. 15,091. Administration Docket.—

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Mary Wright Gill, it is ordered this 10th day of March, A. D. 1908, that John Newton Wright, non-resident (care of United States Marine Corps, Alongop, P. I.), and all others concerned, appear in said court on Tuesday, the 14th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-3t

C. W. Statson, Solicitor

In the Supreme Court of the District of Columbia.

Frederick G. Statz v. Ella M. P. Chandler et al.

Equity, No. 27,632.

The object of this suit is to partition lots 34 and 35 in James J. Shedd's subdivision of part of square 195, as said subdivision is recorded in liber W. F., page 172, of the records of the office of the surveyor of the District of Columbia, between the parties entitled thereto. On motion of the complainant it is this 11th day of March, 1908, ordered that the defendants, Ella M. P. Chandler and Marie Chandler, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a

[Seal] week for three successive weeks in The Washington Law Reporter. HARRY M. CLA-BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 11-3t

Henry H. Glasie, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise A. B. Hughes, Deceased.

No. 14,732. Administration Docket.—

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 3d day of March, 1902, purporting to be the last will and testament of Louise A. B. Hughes, deceased, having been returned as to Clara C. Mitchell, Marian G. Wilson, Annie C. Grieff, Sumpter Calvert, Charles H. Hiern, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma T. Brown, Kittle White, Pattie Weeks, and unknown heirs at law and next of kin of Louise A. B. Hughes, "not to be found," it is, this 13th day of March, 1908, ordered that the issues be set down for trial on the 15th day of April, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is (whether said paper writing was procured by fraud), etc., etc. ASHLEY M.

[Seal] GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-4t

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WASHINGTON, D. C. - - - - - APRIL 3, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Deeds—Delivery.

In *Walker v. Warner*, the action was in ejectment to recover real estate in this city. Plaintiff claimed under a deed from one Rebecca Thompson, while the defendants claimed under the will of the same person. The question turned upon whether or not there had been a delivery of the deed to plaintiff, as to which there was direct evidence that a delivery had been made, in addition to the presumption arising from the fact that the deed was in the possession of the plaintiff, the grantee named in it. Upon these facts the Court of Appeals holds, in an opinion by Mr. Chief Justice Shepard, that the trial court should have directed a verdict for the plaintiff, notwithstanding there was evidence that the grantor was permitted to remain in possession and control of the property. The judgment was reversed and a new trial ordered.

#### Contracts—Suit for Specific Performance—Parties.

In *Griffith v. Stewart* the suit was in equity to enforce the specific performance of a contract for the purchase of real estate. The vendor died before the time fixed for consummation of the contract, leaving a will giving plaintiff, as his executor, full and complete power and authority over his entire estate, real and personal. Plaintiff tendered to defendant a deed for the property and

demanded performance of the contract, which was refused. The present bill was filed, and a decree in favor of plaintiff was made, but subsequently this decree was vacated and the bill dismissed on the ground that the heirs and devisees of the vendor were necessary parties, and that the deed by the executor was insufficient to pass the title. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, reverses the decree and remands the cause with directions to enter a decree for the plaintiff.

#### Bill of Exceptions—Failure to Extend Term for Settlement.

In *Jennings v. P., W. & B. Railroad Company*, a motion was made by appellee to strike out the bill of exceptions and affirm the judgment. It appeared the verdict was entered December 4, 1907, and judgment for defendant for costs on December 20, 1907. No order was made extending the term for settling the bill of exceptions, but on January 14, 1908, eight days notice having been previously given to counsel for appellee, the bill was presented to and approved by the trial court, without objection on the part of counsel for appellee, who were present in court. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, grants the motion, holding that the failure of counsel for appellee to object to approval of the bill of exceptions was not the equivalent of express consent by them to such approval.

#### Malicious Prosecution—Libel—Assault.

In *Slater v. Taylor*, it appeared that plaintiff had a claim against defendant for collection. He called upon him a number of times, and failing to obtain admittance, stuck cards around the face of the door and entrance, on some of which were printed or stamped the words: "Collection department. F. B. Slater, collector. Call at once;" on others, "Must have money," etc., besides the name of defendant. Plaintiff finally called, with his wife, on defendant, and gained admittance to the premises, when defendant ejected him. Defendant thereafter filed in the Police Court an affidavit charging plaintiff with having accused him of a crime and with conduct tending to disgrace him, with intent to extort money from him. A warrant was issued and plaintiff arrested, but the case was nol. prossed. Plaintiff then filed suit against defendant for malicious prosecution, libel and assault. The trial court directed a verdict for defendant, and its ruling is affirmed, in an opinion by Mr. Justice Robb.

#### Statute of Limitations—Directing Verdict on Opening Statement.

In *Hornblower v. The George Washington University*, the plaintiff sued to recover for architectural services. The defendant pleaded non

assumpsit and the Statute of Limitations. The trial court directed a verdict on the plaintiff's opening statement, holding that the matters relied upon to avoid the bar of the Statute of Limitations were not sufficient for that purpose. The Court of Appeals affirms the judgment, in an opinion by Mr. Justice Van Orsdel.

#### Appeals—Parties.

In *Taylor v. Leesnitzer*, a motion was made to dismiss the appeal because one of the defendants to the original bill, who had a substantial interest adverse to appellant in maintaining the decree appealed from and whose interest would be affected by its modification or reversal, was not made a party to the appeal. The Court of Appeals, in an opinion by Mr. Justice Robb, grants the motion and dismisses the appeal.

#### Personal Injuries—Directing Verdict—Judgment Reversed.

In *French v. National Laundry Company*, the action was by a minor to recover for personal injuries sustained, while employed in defendant's steam laundry. The plaintiff was the first witness examined, and at the close of her testimony the trial court, of its own motion, directed a verdict for defendant. This action is held erroneous by the Court of Appeals, in an opinion by Mr. Justice Van Orsdel.

#### Condemnation Proceedings—Eleventh Street Extension.

In *Columbia Heights Realty Co. v. Macfarland*, the appeal was from a judgment of the court below in proceedings for the extension of Eleventh street. The appellant assigned numerous errors and irregularities in the proceedings, but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that no reversible error was committed, and affirms the judgment.

In *Wallach v. Macfarland*, the appeal was from the same judgment as that above noted. The judgment is affirmed, in an opinion by Mr. Chief Justice Shepard.

#### Negligence Causing Death—Directing Verdict.

In *Conger v. B. and O. Railroad Company*, the appeal was from a judgment entered upon a verdict directed by the court in an action to recover for negligently causing the death of plaintiff's intestate, a minor. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, holds that there was a material conflict in the evidence, requiring its submission to the jury, and reverses the judgment.

#### Easements—Extinguishment by Nonuser.

In *Brunthaver v. Talty*, the appeal was from a decree dismissing a bill filed to enjoin the appellee

from making use of an alleyway adjacent to appellant's premises. It was contended by appellant that certain acts on the part of the appellee constituted an abandonment by her of the use of the alley, and her right thereto, though conferred by the deed under which she derived title, was extinguished. The court below denied this contention, and its ruling is affirmed, in an opinion by Mr. Chief Justice Shepard.

#### Lease—Consent to Assignment—Refusal of Lessee to Assign.

In *O'Brien v. Pabst Brewing Company*, the plaintiffs sued to recover \$2,000 agreed to be paid by defendant, a creditor of the lessee, for the consent of plaintiffs' testator, the lessor, to the assignment of a lease. It appeared that the lessee refused to make the assignment and remained in possession of the property, paying rent therefor to the lessor. The trial court directed a verdict for defendant, and its ruling is affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb.

#### Ejectment—Adverse Possession.

In *Scott v. Herrell*, the action was in ejectment. Plaintiffs claimed the record title to the property in controversy, while the defendants claimed title by adverse possession, relying upon a tax deed issued in 1868 to their predecessor in interest as color of title, and the subsequent adverse occupation of the property by tenants of such party. The judgment below was in favor of defendant, and this judgment is affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb.

#### Promissory Notes—Affidavit of Defense—Usury.

In *King v. Curtin*, the defendant appealed from a judgment for plaintiff under the 73d rule for insufficiency of his affidavit of defense. The action was on thirteen notes, and the affidavit of defense alleged that one of the notes was a renewal of eighteen notes on which defendant was accommodation indorser and which were usurious, and that the other twelve notes were also usurious, but did not state the amount actually advanced on each note. The Court of Appeals, in an opinion by Mr. Justice Robb, holds the affidavit insufficient and affirms the judgment.

#### Betting on Horse Race—Conviction Affirmed.

In *Pfeiffer v. United States* the defendant in error was found guilty in the Police Court upon an information charging him with making a bet on a horse race. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, declines to consider the sufficiency of the evidence to support the judgment, no motion raising that question having been made in the court below, and affirms the judgment.



## Court of Appeals of the District of Columbia.

HELEN BUCHANAN ET AL., APPELLANTS,  
v.  
HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, ET AL.

### CLOUD ON TITLE; TAX SALE VACATED ON PAYMENT OF ASSESSMENT AND INTEREST.

1. A court of equity has jurisdiction of a suit to have declared void, as a cloud on title, a sale made of complainants' property for default in the payment of an assessment alleged to be invalid, and to have the tax lien certificate issued to the purchaser at such sale cancelled.
2. In proceedings under the act of February 10, 1899, for the extension of Rhode Island Avenue, an assessment for benefits was made against complainants' property. The act made no provision as to the time within which the assessments should be paid, but on April 15, 1902, the property was sold for default in payment of the whole assessment. Subsequently, the act of July 1, 1902, was passed, providing for payment of the assessments in five equal yearly instalments, with interest at four percent per annum. In a proceeding by complainants to have the said sale vacated as a cloud on their title, and to have the tax sale certificate cancelled, it was held that the sale was made without authority of law and therefore void and should be vacated; that said sale was not validated by the subsequent act of July 1, 1902, but that the assessment being valid, and the time for payment of the entire assessment fixed by the latter act having expired, relief would be granted complainants only on condition they should, within a reasonable time, make payment of the amount of the assessment with interest at four percent per annum.

No. 1816. Decided March 16, 1908.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity No. 23,308, dismissing a bill to vacate a tax sale and for other relief. Reversed.

Mr. SAMUEL MADDOX and Mr. H. P. GATELY for the appellants.

Mr. E. H. THOMAS for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The bill in this case was filed by the complainants on May 8, 1902, against the Commissioners of the District and Watson J. Newton, a resident thereof.

The allegations are, substantially, that the infant complainants, who sue by next friend, live with their father, an officer of the Army of the United States, who was then stationed in the Island of Porto Rico, and are the only heirs at law of John R. Myers who died intestate in the city and State of New York on December 22, 1899. That said Myers was, at the time of his death seized and possessed of lot three and part of lot two in Bloomingdale a subdivision of parts of a tract of land in the District of Columbia. That on March 8, 1899, the District Commissioners filed a petition in the Supreme Court of the District, under authority of an act of Congress approved February 10, 1899, entitled an act to extend Rhode Island Avenue, to have a jury empanelled to assess the damages incurred by the extension so authorized. That no notice was given to said Myers of the said proceeding and no appearance was made therein on his behalf. That on December 1, 1899, the said jury returned a verdict wherein they assessed the sum of \$1,522 as benefits accruing to the lots of said Myers through the extension of the said avenue.

That a rule to show cause why said verdict should not be confirmed was issued by the court into which it had been returned. That in response to said rule, several owners of land affected by said verdict filed objections to its confirmation, the legal effect of which exceptions, it is charged, was to require the empanelling of another jury, and to render void any assessment sought to be made under said verdict. That the assessments as made under said verdict are void because the act does not provide when the same shall be paid. That as the same appear on the tax rolls, they cast a cloud on complainants' title. That notwithstanding complainants called the attention of the Commissioners to the invalidity of the assessments, and requested that no steps be taken to enforce the same, the said Commissioners advertised the said lots for sale for nonpayment of said assessments which included interest at four percent per annum from February 7, 1900, and cost of advertisement. That the invalidity of said assessment does not appear on the face of the tax records, but depends upon judicial investigation, and seriously clouds complainants' title. That a sale was made under said advertisement on April 15, 1902, at which the complainants' said lots were purchased by defendant Newton for the whole amount of the assessments thereon including interest and costs. That, in accordance therewith said Newton will receive a tax lien certificate bearing interest at the rate of fifteen percentum per annum. That said sale and said certificate will further cloud the title of complainants, besides subjecting them to heavy penalties and charges. That the statute under which the said proceedings were had is unconstitutional and void because the taxing district fixed authorizes assessments against certain lands only, and leaves out other lands occupying the same relative position to the said street extension, for which reason the taxing scheme of the act is arbitrary, unequal and unfair. That complainants are in possession of said lots and can not, therefore, take any proceeding at law to dispel the cloud upon their title.

The prayers are that the said sale be declared void, and the tax lien certificates aforesaid issued to said Newton declared void; that the said assessments be declared invalid and void, and that the defendants be ordered to cancel the same, and be perpetually enjoined from referring thereto in any tax certificate to be issued by them.

Newton answered the bill alleging his purchase at the said sale, which he alleged to be regular, the receipt by him of the usual tax lien certificate as said purchaser, and that he is entitled to retain the same until redeemed by the owners of the lots as provided by law in such cases.

The answer of the Commissioners admitted the allegations of the bill as to the title and possession of the complainants. They alleged that notice of the proceedings for condemnation and assessment was given by publication as required by law, and that the same appears in the record thereof; that the proceedings were regular and valid, but if not, the invalidity appears on the face thereof, and in no sense constitutes a cloud upon the title. They deny the invalidity of the act under which the assessment was made, and aver that the complainants appeared in the said proceeding and moved to quash the same; the motion was overruled, and complainants failed

to appeal therefrom; that their remedy at law is complete, and this court is without equitable jurisdiction in the premises.

The cause was submitted to the court upon the bill, answers, and the following agreed statement:

"John R. Myers, a resident of the State of New York, was, at the time of his death and for many years prior thereto had been, the owner of all of lot 3 and the north 25 feet front by the full depth thereof of lot 2 in block 2 in a subdivision of lands in the District of Columbia known as Bloomingdale. He died on the 22d day of December, 1899, in the city of New York, unmarried and intestate, leaving the complainants, all infants under the age of twenty-one years, his sole heirs at law.

"On the 8th day of March, 1899, the said Commissioners began proceedings in this court, on the District side thereof, for summoning a jury of seven, to award damages and assess benefits to adjacent lands by reason of a proposed extension of Rhode Island avenue under an act of Congress approved February 10, 1899. A jury of seven was empanelled and on the 1st day of December, 1899, returned a verdict assessing, inter alia, said lots so aforesaid belonging to the complainants, to an aggregate of \$1,522 as for benefits supposed to have resulted from said supposed extension of Rhode Island avenue.

"On this proceeding the said John R. Myers had no notice, and did not appear before the jury at any time during their proceedings, either in person or by attorney. Notice was, however, given by the said Commissioners by advertisement in The Washington Post and The Evening Star. Said advertisement described the lands to be assessed, as specified in said act of Congress, but it did not contain the name of said John R. Myers, and the fact of its publication was never brought to his attention.

"Subsequently an order of ratification nisi was passed in the cause and published in the Washington Law Reporter on, to wit, the 2d day of January, 1900, but no copy thereof was served upon the complainants. As before shown, said John R. Myers died on the 22d day of December, 1899, and before the time limited in said order for showing cause had expired. At this time, and for more than a year afterwards, these complainants were living with their father on the Island of Porto Rico, where he was on duty as an officer of the United States Army. No exceptions to said verdict were taken by the said Myers or these complainants, but objections thereto were filed in the cause by other owners of property adjacent to and abutting on Rhode Island avenue, whose lands were similarly assessed as for benefits expected to result from the said extension.

"In the pamphlet of sales for taxes in arrear on the 1st day of July, 1901, issued by the officials of the District of Columbia, such sales being advertised to begin on the 8th day of April, 1902, complainants' lots were advertised for sale as follows:

Myers, John R., Bloomingdale, block 2, lot 3 and improvements.	
Assessment for extension of Rhode Island avenue .....	\$1,342 00
Interest from February 7, 1900 .....	116 42
Advertisement .....	50
	<hr/> \$1,458 92

Bloomingdale, block 2, north part of lot 2 and improvements.

Assessment for extension of Rhode Island avenue .....	\$180 00
Interest from February 7, 1900 .....	15 68
Advertisement .....	50
	<hr/> \$196 18'

"On the 15th day of April, 1902, the complainants' lots were sold under the foregoing advertisement and bought in by defendant, Watson J. Newton, for the amount claimed to be due because of said assessments, interest thereon, penalties and costs.

"On the 8th day of May, 1902, the complainants exhibited their original bill in this cause against the said Commissioners and the said Watson J. Newton, praying that the said sale for taxes in arrear be vacated, and the said assessments declared invalid and of no effect.

"Defendant Newton filed an answer to the bill on the 10th day of May, 1902, wherein he averred that he purchased said lots at the aforesaid sale, that the usual tax lien certificates had been issued, and that he was entitled to retain these certificates until redeemed as provided by law by the owners of the property. Issue was joined on this answer.

"The Commissioners filed a general demurrer to the bill, which demurrer has been overruled.

"It is now stipulated by counsel for the respective parties that this cause may be heard and finally determined on the bill, the answer and the foregoing agreed statement of facts, the right being reserved to refer to such parts of the record in the condemnation proceedings (District Court Case No. 544) as any of the parties hereto may desire, reserving to the parties the right to question the jurisdiction of the court."

The record shows the order of publication made in the original proceeding, on March 22, 1899, directing notice to all concerned to be published in the Evening Star, the Daily Post, and the weekly Washington Law Reporter, all papers published in the city of Washington. It shows that this publication was made as ordered. It shows the order empanelling the jury of assessment after the notice, together with the verdict returned by them. It shows also that a decree was entered January 2, 1900, confirming the verdict unless cause to show why the same should not be confirmed, after notice by publication; and that exceptions to confirmation filed by certain land owners affected by the verdict were overruled January 27, 1900, and the confirmation made final. Complainants' names do not appear among those excepting to the confirmation of the verdict.

The learned justice presiding in the Equity Court delivered a brief opinion to the effect that the court was without jurisdiction in the premises, and in accordance therewith a decree was entered dismissing the bill. From this decree complainants have appealed.

1. If the sole or main purpose of this bill is to vacate the assessment and restrain the collection, by the municipal authorities, of the tax so assessed against the complainant's property, as done without authority of law, its dismissal was within the rule laid down in such cases by the Supreme Court of the United States. *Dows v. Chicago*, 11 Wall., 108, 110; *Hannewinkle v. Georgetown*, 15 Wall., 547; *State Railroad Tax Cases*, 92 U. S.,

575, 613; *Burgdorf v. D. C.*, 7 App. D. C., 405, 413; 24 Wash. Law Rep., 21. The reason of the rule is thus stated in *Dows v. Chicago*: "It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of the Government, and thereby cause serious detriment to the public." In such cases an adequate remedy ordinarily exists through an action at law to recover the tax, the collection of which is enforced against the protest of the taxpayer. And so where the proceeding for condemnation and incidental assessment is pending in a court where the owner of property to be affected has the opportunity to defend against the imposition of the assessment and obtain relief, if entitled thereto, equity will not assume jurisdiction to stay the proceedings. *Wilson v. Lambert*, 168 U. S., 611, 618.

In the case at bar the proceeding to assess was at an end, and the infant defendants were in no situation to assert any rights therein, and when actually informed of the necessity of action, the time for appeal, even, had passed. Moreover, before the bill could be filed the judgment confirming the assessment had been executed by the sale of the lots, the District of Columbia had acquired the entire amount of the assessment from the purchaser at said sale, and an inchoate title had passed to him. The appellants contend that the main purpose of their bill is to cancel the certificate issued to the purchaser at a sale which was without authority of law even if the assessment had been regularly made, as constituting a cloud upon their title; and in addition thereto, to vacate the assessment as illegal and void. It is contended that the Court of Equity has jurisdiction to remove the cloud, and having jurisdiction for that purpose may determine every question involved. Notwithstanding the rule laid down in *Dows v. Chicago* and *Hannewinkle v. Georgetown*, supra, it was admitted in those cases that the rule would not govern where there were in addition "special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title." In *Union Pacific Railway Co. v. Cheyenne*, 113 U. S., 516, 525, it was said: "It can not be denied that bills in equity to restrain the collection of taxes illegally imposed have often been sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax, for it must be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage, or be subject to vexatious litigation, if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected by distress and sale of the taxpayer's lands, the loss of his freehold by means of a tax sale would be a mischief hard to be remedied. Even the cloud cast upon his title by a tax under which such a sale

could be made would be a grievance which would entitle him to go into a court of equity for relief." See, also, *Lyon v. Alley*, 130 U. S., 177, 187; *Ogden City v. Armstrong*, 168 U. S., 224, 238. We are of the opinion that the facts alleged in the bill tending to show that a cloud has been cast upon the title are sufficient to bring the case within the doctrine of those cases.

The act of February 10, 1899, under which the condemnation proceeding was instituted, provided in section 3 that one-half of the damages for land taken for the extension of Rhode Island avenue should be assessed against certain property lying on each side of said avenue, within certain boundaries including the Bloomingdale subdivision and other lands described. Section 5 provided: "That when confirmed by the court, the assessments made as aforesaid shall severally be a lien upon the land assessed, and shall be collected as special improvement taxes in the District of Columbia have been collected since February twentieth, eighteen hundred and seventy-one, and shall be payable in five equal instalments, with interest at the rate of four per centum per annum until paid." The meaning of this section was passed upon in the case of *Todd v. McFarland* (20 App. D. C., 176, 182; 30 Wash. Law Rep., 423), where it was said by Mr. Chief Justice Alvey: "As will be observed, the assessments are to be collected as special improvement taxes are collected, and are made payable in five equal instalments, without saying at what interval of time such payments shall be made, whether annually, semi-annually, or monthly. It is manifest that the amounts of the assessments were not to be paid all at once, and whatever time was intended to be given for payment was intended to be divided so as to make the payments equal in amount and at equal intervals of time, commencing from the first of the five instalments. But the question of time is left in entire uncertainty." In that case, which was an appeal from an order confirming a verdict assessing damages and benefits, it was held, however, that this defect in the mode of collection of the assessments did not render them void, and it was said that such defective means of collection might be cured and rendered effective by a subsequent act of Congress.

At the time the sale complained of in this case was made, there had been no act of Congress curing this defect in section 5, and there was no power of sale for an instalment of the amount of the assessment, much less for the whole thereof at one time. The law for the collection of taxes provides that when a sale for taxes is made a certificate of purchase shall be issued to the purchaser thereof, and that the property so sold may be redeemed at any time within two years by paying the collector of taxes, for the use of the purchaser, the sum mentioned in the certificate with interest thereon at the rate of 12 per centum per annum. In case of failure to redeem as aforesaid, it is provided that a deed shall be executed to the certificate holder, "which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple," to the land so purchased. Now, had the appellants taken no steps to arrest the perfection of said sale by the execution of the deed to the purchaser, who had been made a party to the suit, it would have issued to him on the expiration of the two years from the date of the issue of the certificate, unless in the

meantime the complainants had redeemed their lots by the payment of the principal sum with 12 per cent interest thereon per annum, although by the terms of the law the assessment bore but 4 per cent interest.

That the sale, though without lawful authority, and the issue of the certificate constituted a serious cloud upon the complainant's title there can be no doubt in our opinion, for it does not appear from the record that the invalidity of the sale is apparent upon the assessment rolls, or upon the face of the certificate. Moreover, the deed that would, in ordinary course, follow the dismissal of the bill, is made *prima facie* evidence of a good title, that would require extraneous evidence to overcome it.

Following the suggestion made in *Todd v. McFarland*, *supra*, the Commissioners obtained from Congress an Act curing the defect pointed out in respect of the collection of such taxes in the act of 1899, by providing that in all cases where the assessments for benefits for extensions have been, or may hereafter be levied, payment of the same shall be made in four equal annual instalments with interest at the rate of 5 per centum per annum from and after sixty days after the confirmation of the verdict and award. The sale in this case had occurred before the passage of this act on July 1, 1902, and the latter does not pretend to validate sales that may have been previously made, even if it had been within the power of Congress so to do. Its sole purpose and effect was to correct the defect in the assessment act by fixing with certainty the time for the payment of the instalments of the assessments that had been made under the former inoperative law. Under its provisions no sale could be made for the entire amount of the assessment, save, possibly, in cases where the instalments had not been collected or enforced within the five years allowed for payment in that form. But no such question arises here.

2. In so far as the bill seeks to vacate the verdict and order of confirmation, and the lien created thereby, relief must be denied.

(1) There is no doubt of the power of Congress to authorize the extension of streets, and the assessment of adjacent lands to the extent of the benefits thereby received, in a designated taxing district. *Bauman v. Ross*, 167 U. S., 548, 589. The act of February 10, 1899, is of such a character.

(2) There is nothing in the record to show that there was any essential requisite to the exercise of jurisdiction that was omitted. The owner of the title at the time the proceeding was begun was cited by publication as were all the owners of lots situated in the taxed district. He died after verdict returned and pending the order to show cause why it should not be confirmed. Parties taking his title by conveyance during that period would be bound by the confirmation of the order. *Wilkinson v. D. C.*, 22 App. D. C., 289, 295: 31 Wash. Law Rep., 507. And it makes no difference in this case that his title passed by his death, intestate, to the complainants as his heirs at law. The proceeding was against the thing. No judgment was sought against any owner by name.

(3) The lien acquired by the confirmation of the assessments and their entry on the tax roll for collection was not impaired by the fact that the time and manner of enforcement were not definitely provided for in the act under which the

proceeding was had. It was within the power of Congress to provide a method of enforcement by the later act for that purpose. *Todd v. McFarland*, 20 App. D. C., 176, 184: 30 Wash. Law Rep., 423.

(4) The main question under this head grows out of the fact that the record shows that certain of the land owners assessed in the same proceeding filed objections to the verdict when returned. Complainants were not parties to the objections. These were overruled and no appeal appears to have been taken therefrom. For all that appears in the record those objectors may have withdrawn their exceptions finally and accepted the result. Had there been an appeal from the order overruling the exceptions, it would have been reversed and a new assessment ordered before another jury composed of twelve men under the provisions of section 263, R. S. D. C., which was adopted in the condemnation act as governing the procedure therein. *Brown v. McFarland*, 19 App. D. C., 525, 530: 30 Wash. Law Rep., 235. That case was not decided until after the confirmation of the verdict in this case.

The contention on behalf of the appellants is, that the filing of objections by any one of the owners of land affected had the effect at once to vacate the verdict of the jury, that the court thereafter had no power to do anything else than empanel the new jury of twelve and direct it to make another assessment of damages and benefits; and, therefore, that the subsequent order of confirmation was void and of no legal effect whatever. This last proposition is founded on expressions in opinions in two decisions by this court. *Brown v. Macfarland*, 20 App. D. C., 525, 531: 30 Wash. Law Rep., 235; *Macfarland v. Saunders*, 25 App. D. C., 438, 442: 33 Wash. Law Rep., 393. The expressions to the effect that the order of confirmation in opposition to the objections against the verdict was null and void, must be considered with reference to the questions actually presented for decision. In the first of those cases, the objectors appealed from the order confirming the verdict notwithstanding their objections. In the second case, the order confirming the verdict had been set aside, on petition of the objectors, in so far as it applied to the assessment of benefits, but confirmed as regards the assessment of damages for land taken or damage. The Commissioners of the District appealed from this order which was affirmed. The case at bar stands on entirely different grounds. It is neither an appeal from an order overruling exceptions and confirming the verdict, nor a direct proceeding to set aside the order of confirmation and open the case to determination by another jury. We think the order of confirmation was not absolutely void as against their attack. The appellants were not among the objectors, and it may be presumed that the objectors withdrew or waived their objections and accepted the result as they had the right to do. See *Macfarland v. Byrnes*, 19 App. D. C., 531, 538: 30 Wash. Law Rep., 237, decided on the same day with *Brown v. Macfarland*, *supra*. In that case, the Commissioners had moved the court to confirm the verdict as a whole notwithstanding exceptions filed, and the court confirmed the same as to the award for damages and vacated it as to the assessment of benefits which were declared void in accordance with a former decision of this court in regard to

the assessment of benefits, which was reversed thereafter by the Supreme Court of the United States. In reversing the order so made, it was said in regard to the right of the objectors to another assessment by the new jury:

"They may prefer to forego that right; and they may prefer no longer to contest the propriety and justice of the assessments. If they so elect, the court will, of course, enter the proper order or decree in the cause. If, on the other hand, they elect further to contest the matter according to law, they should have the opportunity to do so. This court should, therefore, not now direct any final order or decree to be entered by the court below in the premises."

3. Upon the theory that the order of confirmation is not subject to attack in this proceeding, and that the lien thereby created is valid and enforceable, it is contended that the bill is fatally defective in that the complainants, though asking equity do not offer to do equity by tendering or offering to pay the same.

It is true that one seeking to remove a tax levy as a cloud upon his title must tender payment or offer to pay any part thereof that may be admitted to be valid and collectible, in order to entitle himself to relief against so much as may be illegal. And in any event, the court as a condition to granting relief may require such payment.

In the case at bar there was no instalment of the assessment due or collectible at all, as we have seen, by reason of the defect in the condemnation act. Nor was that defect cured by the later act until after the bill had been filed. The complainants were under no obligation to tender payment of a sum not then due in whole or in part. By reason of lapse of time during the pendency of this litigation, the entire amount of the assessment has become due and enforceable under the provisions of the curative act, with four per centum per annum from a period commencing sixty days after the confirmation of the assessment. As that assessment must remain a charge upon complainants' lots until paid, it is proper in rendering the decree in cancelling the sale made thereof and the certificate issued to the purchaser to require the complainants to do equity by discharging the lien.

For the reasons given the decree will be reversed with costs and the cause remanded with directions to enter a decree vacating the sale of complainants' lots, and cancelling the certificate issued to the purchaser at said sale, Watson J. Newton, upon condition, however, that the complainants shall within some reasonable time, to be fixed by the court, pay into court for the use of the defendants as they may be entitled, the entire amount of said assessment with interest thereon as required by the law. It is so ordered.

Reversed.

Liability of Insurance Company for Death at the Hands of Justice.—In a novel insurance case in Georgia, insured was shot by the husband of his paramour while attempting adultery. Defendant company contended that it was not liable on the policy on the ground that such killing was the administration of "preventive justice," under the Georgia Code, releasing insurer in such case. The Supreme Court of Georgia held, however, that the Code contemplated the taking of life only by an officer of the law. Supreme Lodge K. of P. v. Crenshaw, 58 Southeastern Reporter, 628.

## Court of Appeals of the District of Columbia.

EDWIN C. CLARK ET AL., APPELLANTS,

v.

HENRY P. MORRIS.

BROKERS; COMMISSION, WHEN ENTITLED TO.

1. A broker employed to sell property upon a commission who by his efforts brings the owner or the agency employing him and the prospective purchaser together, and a sale results, is entitled to his full commission, although the sale be accomplished by the owner or such agency without further assistance from the broker.
2. The facts in the present case, wherein plaintiff was employed to solicit subscriptions to stock in a mining company and was to receive a commission of twenty per cent on subscriptions obtained by him or through his influence, held to bring the plaintiff within the rule above stated, and a judgment in his favor affirmed.

No. 1789. Decided March 11, 1908.

APPEAL by defendants from a judgment of the Supreme Court of the District of Columbia, at Law, No. 46,597, in action by a broker to recover commissions on sale of stock. Affirmed.

Mr. HENRY E. DAVIS for the appellants.

Mr. ALEXANDER WOLF and Mr. M. D. ROSENBERG for the appellee.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This is an action at law instituted in the Supreme Court of the District of Columbia by appellee against Edwin C. Clark and Eugene Davis, trading as Clark & Co., and the Mexican Mining and Exploration Company, a corporation. The declaration is in common counts, and the demand is for services rendered by appellee in securing subscriptions to the capital stock of the Mexican Mining and Exploration Company. The action is based upon an agreement in the form of a letter addressed to the plaintiff in February, 1903, sent by Clark & Co., as follows: "We agree to employ you to solicit subscriptions to the stock of the Mexican Mining and Exploration Company and will pay you a commission of 20 per cent on all subscriptions obtained by you, or through your influence." Appellee admitted that he was only to be paid commissions upon such subscriptions as were paid.

The facts appearing in the record are to the effect that appellee agreed to the terms of said employment, and had conferences from time to time with appellant Davis, of Clark & Co., and with the officers and directors of the Mining Company. During his employment he procured subscriptions to said stock at \$2.50 per share from one Cowen of 5,000 shares, amounting to \$12,500, together with some other smaller subscriptions. When Cowen subscribed he stated to appellee that he would take 5,000 shares and would endeavor to interest some of his friends in the stock, among others one Garrett. The appellee informed appellant Davis of his conversation with Cowen, and stated that he would attempt to secure an additional subscription from him, and also see him regarding the subscription of Garrett. Appellee, under the direction of Davis, continued his efforts with Cowen, and together they called upon Davis at the office of the Mining Company in Washington. Davis directed appellee to return

to Baltimore on the same train with Cowen and talk further with him about the purchase of stock. Appellee returned to Baltimore as directed with Cowen, discussing with him the matter of an additional subscription, and also the best method of procuring the Garrett subscription. Appellee was preparing to go to see Garrett when Davis instructed him not to go until he should notify him. Later appellee spoke to Davis regarding Garrett's coming into the company, and Davis replied, "Not to worry, that Mr. Cowen would see him at the earliest time convenient." Appellee called upon Cowen to urge him to see Garrett, to which Cowen replied, "I will see him in a day or so." Appellee was urging Davis almost daily to let him see Garrett and, if possible, procure his subscription, but Davis still requested him to wait.

Later, in the spring or summer of 1903, Cowen, who had become a director in the defendant company, and Garrett visited the mines of the company in Mexico. Considerable correspondence between appellee and Clark & Co. and Davis appears in the record, showing that up to the time that Cowen and Garrett returned from Mexico in the summer of 1903, Clark & Co. and Davis were not only urging appellee to dispose of the stock of the company, but had induced appellee himself to invest in the stock of the company to the amount of \$2,500. It further appears that, on the return of Cowen and Garrett from Mexico, appellee inquired of Davis if they had subscribed, and was told that they had not. Appellee testified, which is not contradicted, that Davis avoided meeting him from that time on, although before that time they were in almost daily communication; that shortly after the return of Garrett and Cowen from Mexico he learned that Garrett had subscribed for \$12,500 worth of stock, and that Cowen had increased his holdings by taking \$6,500 additional stock. It is for the recovery of the commission on the sale of this stock that this suit was brought in the lower court.

The record evidence of sales of stock to Cowen and Garrett are disclosed by two receipts, which are as follows:

"JUNE 10, 1903.

Received from Clark & Company Interim Certificate No. 151 of Mexican Mining and Exploration Company for 10,000 shares.

JOHN K. COWEN,  
Baltimore.  
JANUARY 29, 1904.

Received from Clark & Company Interim Certificate No. 244 of The Mexican Mining and Exploration Company for 5,000 shares.

ROBERT GARRETT,  
Continental Building, Baltimore, Md."

The foregoing facts were not controverted by any evidence offered on behalf of the appellants. Appellee was dealing with appellants in the capacity of an agent or broker. The law is well settled that where a broker is employed to sell property upon a commission, and by his efforts brings the owner, or agency through which he is employed, and the prospective purchaser together, and a sale results, though it be accomplished by the owner, or such agency, without any further assistance by the broker, the broker is entitled to his full commission, the same as if he had conducted all the details of the sale. The contract in this case provided that appellee should be paid

not only for the sales he made, but for the sales that the company or Clark & Co., its fiscal agents, should make through his influence. The agreement was broad enough to comprehend any prospective purchaser whom appellee, through his efforts, should discover and bring to appellants, and who, as a result of his influence, should afterwards purchase stock and pay for it. We think the efforts of appellee as to both Cowen and Garrett bring him within the rule. The evidence discloses that when Cowen made his first purchase of stock through the efforts of appellee, he not only led appellee to believe that he would increase his holdings, but assured him that he would assist him in getting Garrett to buy some of the stock. When appellee reported this information to Davis, he was instructed to go with Cowen to Baltimore, and not only sell more stock to Cowen, but to see Garrett. Before appellee could see Garrett, Davis instructed him not to see him until he would notify him. Appellee was putting forth his best efforts to dispose of the stock, both to Cowen and Garrett, when he was deterred by Davis from further negotiating with Garrett. The principal can not interfere with the operations of his broker in that way, and thereby escape the payment of commissions that otherwise would have been earned by such broker.

The only question left for determination is, was the stock for which the receipts of Cowen and Garrett given paid for? The court instructed the jury as follows: "The plaintiff, if he is entitled to recover at all, is entitled to recover only to the extent that he proves, by a preponderance of the evidence, that the subscription to the stock described in the declaration was procured by him or through his influence, and that the subscription was actually paid for by the subscriber. It is not, however, necessary that the proof should be direct. If there is testimony on those points in the case—if such facts develop which will justify the inference—you may find the necessary element present. But it is for you to say whether or not that inference should attach. For example, if it is proven that the first Cowen subscription was procured through the influence of the plaintiff and that there was a second subscription, then you are justified in inferring that the influence which procured the first, was the same that procured the second, in the absence of anything to the contrary. And so, in respect to the question of payment for stock, if you find that stock certificates were actually delivered to subscribers, you may infer that they were paid for by the subscribers, in the absence of anything to the contrary. It is not a necessary inference, but one the drawing of which is in your discretion and judgment according to the case." The instructions are assailed by counsel for appellants on two points, first, that the fact that the first Cowen subscription was procured through the influence of the appellee will not justify an inference that the same influence procured the second, and, second, that the delivery of certificates of stock to subscribers is not a presumption that such stock was paid for. The instructions of the court to the jury should apply the law to the facts as disclosed in the case in which they are given. An instruction correctly stating the law in one case, if given in another case, though similar, might be erroneous. We think that the court committed no error in the instructions here given, when applied to the facts of this case. The evidence

of appellee's dealings with Cowen, and the circumstances under which appellants prevented him from negotiating with Garrett, together with the receipts from Cowen and Garrett, showing the delivery of stock for which appellee testified he was informed Garrett paid \$12,500 and Cowen \$6,500, raises sufficient presumption of purchase and payment to cast the burden upon the appellants of removing that presumption. This the appellants have failed to do, and the court committed no error in instructing the jury that these facts could be presumed from the evidence adduced in the case. It must be remembered that no evidence was offered on the part of appellants to contradict any of the facts here stated. Appellee was not required, as insisted by counsel for appellants, to bring in the books of the company, or to produce further evidence of payment. The evidence produced by appellee was sufficient in the absence of any contradiction to shift the burden to the appellants of establishing the fact that payment had not been made if such was the case. This was a fact peculiarly within their possession, and which they readily could have established.

The price for which this stock was actually sold to Cowen and Garrett is immaterial. The price for which appellee was directed to negotiate for the sale of the stock was \$2.50 per share. It was upon that basis that he brought the parties together. If the stock in question was sold for a less price than appellee was authorized to take, and the sale was consummated without notice of the reduction in price to appellee, he is entitled to recover his commission on the basis of a sale at \$2.50 per share. If they sold the stock at a greater price than that given appellee upon which to base his negotiations, they have not been damaged and can not be heard to complain.

The judgment is, therefore, affirmed with costs, and it is so ordered.

Affirmed.

L. D. SECHRIST, APPELLANT,

v.

JOSEPH R. ATKINSON.

**EVIDENCE; MEMORANDA; REAL ESTATE BROKERS; COMMISSIONS.**

1. In an action by a broker to recover commission on a sale of real estate, where it appeared that plaintiff had a distinct recollection of what occurred at his first interview with defendant and testified fully thereto, a memorandum made at the time not being necessary to refresh his memory, is inadmissible for the purpose of corroborating his testimony, and its admission in evidence constitutes reversible error.
2. An owner of real estate can not escape liability for commission to an agent employed by her by herself effecting a sale of the property to a purchaser found and stimulated to the purchase by the efforts of the agent, even though she may have had no knowledge that the agent was the procuring cause, provided the agent had not in the meantime abandoned the undertaking.

No. 1810. Decided March 16, 1908.

**APPEAL** by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,387, entered upon a verdict in an action to recover commissions on sale of real estate. Reversed.

Mr. HAYDEN JOHNSON and Mr. W. W. BOARMAN for the appellant.

Mr. J. B. ARCHER, JR., for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun in the justice's court by Joseph R. Atkinson, a real estate broker, to recover the sum of \$240, claimed as commission on a sale of certain premises made by him for the defendant. On appeal from a judgment for plaintiff in that court, judgment was rendered for plaintiff for said sum in the Supreme Court of the District.

The bill of exceptions shows that the plaintiff testified to the effect that he was a real estate broker and called on defendant August 31, 1905, in response to a letter from her regarding the sale of property. That defendant told him she wished to sell her dwelling-house and would accept \$6,000 therefor, and authorized him to sell the same for that sum. That he then and there made a pencil memorandum on the back of the letter. This memorandum was then offered in evidence, and admitted over the objection of the defendant, whose exception was noted. The memorandum is as follows: "1227 11 St. N. W.—10 R—b—2 story and basement, Lot x, Frame Stable, Rent \$45, Price \$7,000, Stoves 4, Trust \$4,000, 5 per cent, Mrs. Lennan North, Mr. Bache, South." His testimony further tended to show that he procured an offer from Bache, who lived in the adjoining house, of \$7,000, and entered into a contract for the sale at said price, with a deposit of \$50. That he reported the sale to defendant, who refused to accept the price, and demanded more. That on September 12, 1905, he informed her that he had an offer of \$7,500. The next day he received a letter from defendant saying she had been offered \$7,800 cash but wanted \$8,000. That he endeavored to induce Bache to offer \$8,000, but was unable to do so; and she told him she would have to have \$8,000 net. Bache then demanded return of his deposit, which was made. Subsequently defendant sold to Bache for \$8,000 and conveyed the property.

Defendant testified to the effect that she wrote plaintiff in August to call and told him to receive offers and submit the same to her, and she would let him know if she would accept. That she declined the offer of \$7,000 when submitted to her. That she wrote plaintiff September 13, 1905, that she had an offer of \$7,800, but wanted \$8,000, adding that he might call if he thought necessary, also thanking him for his trouble. That she had known Bache for fourteen years. He lived next door, and she had, about one year before, talked with him about selling to him. That when plaintiff reported the offer of \$7,000, he declined to disclose the name of the proposed purchaser. That defendant reported he could not get more than \$7,500, and she insisted on \$8,000. Later, she put the matter in the hands of her attorney, who sold to Bache for \$8,000. Bache testified that about September, 1904, defendant had told him she wanted to sell, and in reply to his inquiry of value she said the property was worth \$10,000. To this he made no answer. That after contracting with plaintiff for \$7,000, and defendant's refusal to accept, he demanded his \$50 deposit, as he refused to pay \$8,000. Later he heard that defendant's attorney had the property in charge, and after negotiations agreed to pay \$8,000. The attorney testified that he undertook the sale in October, 1905, knowing nothing of plaintiff's negotiations with Bache, to whom, after about two weeks, he



effected the sale for \$8,000. He charged no commission.

The court charged the jury, that if they believed from the evidence that defendant had authorized the plaintiff to sell the property for \$6,000 and the plaintiff had secured a purchaser in the person of Bache who had agreed and was willing to pay \$7,500 for the property, the plaintiff had earned his commission upon that amount and would be entitled to recover the same; and further that if they believed from the evidence that defendant had simply authorized plaintiff to secure a purchaser of the property without fixing any price thereon, and the plaintiff had secured a purchaser of the property without fixing any price thereon, and the plaintiff had secured a purchaser at a price which she accepted and sold for, that defendant had performed his contract and earned his commissions thereon. Further the court charged the jury that according to defendant's contention the plaintiff would not be entitled to a verdict unless he had found a purchaser willing to pay \$8,000 net, for said property; and that the burden of proof was on the plaintiff.

Defendant excepted to the first of these instructions on the ground that there was no testimony upon which to found such a contract; and to the second, because that there was no evidence that the defendant had ever insisted upon receiving \$8,000, net, for the property.

We are of the opinion that it was error to admit in evidence the memorandum claimed to have been made by the plaintiff at the time of his first interview with the defendant. A memorandum of the kind may be referred to by a witness to refresh his memory where he has no distinct, independent recollection of the facts recorded, or the date of the occurrence. Whether, under the conditions stated, the memorandum so made by one party may be introduced in evidence on his behalf, presents a question concerning which there is a decided conflict of authority. This question is an open one in the Supreme Court of the United States. *Bates v. Preble*, 151 U. S., 149, 157. The facts disclosed by the record do not require its determination in the present case. It appears from the bill of exceptions that the plaintiff had a distinct recollection of the facts, and that he neither used nor needed the memorandum to refresh his memory. Its introduction could, therefore, serve no other purpose than to corroborate his evidence. Under these conditions it was clearly inadmissible. *Gurley v. MacLennan*, 17 App. D. C., 170, 180; 28 Wash. Law Rep., 830; *V. & M. R. v. O'Brien*, 119 U. S., 99, 102.

The first paragraph of the charge that was excepted to correctly stated the principle of law applicable to the case as presented by the testimony on behalf of the plaintiff. *Bryan v. Abert*, 3 App. D. C., 180, 187; 22 Wash. Law Rep., 297. Notwithstanding an owner may, after authorizing a sale by an agent, contract with a purchaser procured by herself alone, without coming under an obligation to her agent for a commission, she can not be relieved of the obligation by effecting a sale to a purchaser found and stimulated to the purchase by the efforts of the agent, even though she may have had no actual knowledge that the agent was the procuring cause, provided that the agent had not, in the meantime, abandoned the undertaking. *Bryan v. Abert*, 3 App. D. C., 180., 186, 188; 22 Wash. Law., 297.

There was error in the second part of the charge in stating that "according to defendant's contention, the plaintiff would not be entitled to a verdict unless he had found a purchaser willing to pay \$8,000 net for said property." The testimony that this net price was fixed by defendant in a later interview with the plaintiff, was given by him and not by the defendant. Considering all of the evidence in the case it is probable, however, that this inadvertent statement had no effect upon the jury.

For the error pointed out, the judgment will be reversed with costs, and the cause remanded for another trial.

Reversed

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Frank P. Leary, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edgar Ramsay Lowe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. DAVID E. L. BRUNER, 1325 Corcoran st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,170. Administration. [Seal.] 14-3t

McGowan, Serven & Mohun, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Francis S. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. MARY H. DODGE, 1821 Belmont Road. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,169. Administration. [Seal.] 14-3t

Wm. D. Hoover, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In the Matter of the Estate of Lizzie Dewey, Deceased.  
Admn. No. 14,943. Docket.

The National Savings and Trust Company having reported to the court that it has received an offer from Jessie Oelrich to purchase lot numbered fifty-eight (58) in William H. Clagett's subdivision of block numbered thirty (30), "Long Meadows," in the District of Columbia, described in its report duly filed in these proceedings, at and for the price of fourteen hundred dollars (\$1,400), upon the terms of two hundred dollars (\$200) cash and twelve hundred dollars (\$1,200), to be secured by deed of trust, and to bear interest at the rate of six per cent (6%) per annum; it is, by the court, this 3d day of April, A. D. 1908, ordered that said offer be accepted and said sale ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of May, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star, once a week for three successive weeks prior to said last mentioned date. By the Court: ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 14-3t

**Legal Notices.**

**Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary M. Walter**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of March, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **30th day of March, 1908**. **NATIONAL SAVINGS AND TRUST CO.**, by **George Howard, Treasurer**. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration.** [Seal] 14-3t

**Carter & Brooke, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Hans Hansen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of December, A. D. 1908**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **30th day of March, 1908**. **JESSE D. NEWTON, I. C. Commissioner**. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,771. Administration.** [Seal.] 14-3t

**John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Rufus Saxton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **25th day of March, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **30th day of March, 1908**. **THE WASHINGTON LOAN AND TRUST COMPANY**, by **Fred'k. Eichelberger, Trust Officer**. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,148. Administration.** [Seal.] 14-3t

**Birney & Woodard, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

**Joseph H. Stewart and George H. White, Claimants, v. Archibald Lewis, et al. No. 27,274, Equity.**  
The trustee in this cause having reported that he has sold lot 26 in **Walter S. Cox's** trustee's subdivision of original lot 21 in square 514 at the price of \$685.00, subject, however, to a deed of trust to secure \$3,500.00, it is this **30th day of March, 1908**, ordered that said sale be confirmed unless cause to the contrary be shown on or before the **24th day of April, 1908**. Provided a copy of this order be published in *The Washington Law Reporter* and in *The Washington Herald* once a week for three weeks before said day. By the Court: **ASHLEY M. GOULD, Justice**. A true copy. Test: **J. R. Young, Clerk**, by **Wms. F. Lemon, Asst. Clerk**. 14-3t

**Walter C. Clephane, Alan O. Clephane, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Sarah Catharine Tise**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of March, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this **26th day of March, 1908**. **GEORGE TISE, Hyattsville, Md.; CHAS. L. DEMAREST WASHBURN, 1746 Corcoran st., Wash., D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration.** [Seal.] 14-3t

**Legal Notices.**

**E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In re Condemnation of Land in Square 542 for Truck-House Site. District Court, No. 767.**

Upon consideration of the petition of the Commissioners of the District of Columbia, filed in the above-entitled cause, and on motion of counsel for the said Commissioners, it is, by the court, this **31st day of March, A. D. 1908**, ordered that the clerk of the court issue a citation to **George G. Eaton and William A. Johnson** to appear in this court on the **10th day of April, A. D. 1908**, at **10 o'clock A. M.**, to answer the said petition, and to show cause why the prayers thereof should not be granted, and why the several pieces and parcels of land in square 542, more particularly described in the petition filed herein, should not be condemned for the purpose of providing a site for a truck house in the southwest section of the city. It is further ordered that a copy of said citation be served by the United States marshal for the District of Columbia upon such owners of the land sought to be condemned herein, and such persons interested therein, as may be found by the said marshal, or his deputies, within the District of Columbia; and it is further ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the said **10th day of April, A. D. 1908**, at **10 o'clock A. M.**, to answer the said petition, and to continue in attendance until the court shall have made its final order ratifying and confirming the award and report of the commissioners to be appointed by the court to appraise the value of the respective interests of all persons concerned in the land and premises mentioned and described in the aforesaid petition. It is further ordered that a copy of this order be published once in *The Washington Law Reporter*, and once in *The Washington Evening Star*, *The Washington Post*, and *The Washington Herald*, newspapers published in the said [Seal] District, before the said **10th day of April, A. D. 1908**. By the Court: **JOB BARNARD, Justice**. A true copy. Test: **J. R. Young, Clerk**, by **F. E. Cunningham, Asst. Clerk**. 14-1t

**E. H. Thomas and A. B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In re Opening of an Alley in Square 2666, in the District of Columbia. District Court, No. 768.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of Sections 1808 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square 2666, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, who not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of an alley in square 2666, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is by the court, this **31st day of March, A. D. 1908**, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the **21st day of April, A. D. 1908**, at **10 o'clock A. M.**, and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered that a copy of this notice and order be published once in *The Washington Law Reporter* and once in *The Washington Evening Star*, *The Washington Herald*, *The Washington Times* and *The Washington Post*, newspapers published in the said District, before the said **21st day of April, A. D. 1908**. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal, or his deputies, within the [Seal] District of Columbia before the said **21st day of April, A. D. 1908**. By the Court: **JOB BARNARD, Justice**. A true copy. Test: **J. R. Young, Clerk**, by **F. E. Cunningham, Asst. Clerk**. 14-1t

**Legal Notices.**

E. H. Thomas and Jas. Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.  
In re the Widening of Bladensburg Road from H  
Street to the District Line, District of Columbia.  
District Court, No. 766.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved January 9, 1907, entitled "An act for the widening of Bladensburg Road and for other purposes," have filed a petition in this court praying the condemnation of the land necessary to complete the widening of Bladensburg Road in the District of Columbia, from H or Boundary street to the District line to a width of ninety feet according to the street extension plans of the said District, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia, to assess the damages each owner of land to be taken may sustain by reason of the widening of the said Bladensburg Road, and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, plus the costs of this proceeding, upon the land abutting upon the said street to be widened, and also upon all other pieces and parcels of land which the jury may find will be benefited by the said opening of the said street, as provided for by the aforesaid act of Congress. It is by the court, this 31st day of March, A. D. 1908, ordered, that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 30th day of April, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 30th day of April, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal, or his deputies, within the District of Columbia and upon the tenants and occupants of the same before the said 30th day of April, A. D. 1908. By [Seal] the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-11

Wm. E. Ambrose, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Sophia S. Seale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1908. MARY E. BIRCHETT, 4343 Lindell Biv., St. Louis, Mo. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,160. Administration. [Seal.] 14-31

B. W. Parker, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anne A. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1908. ROBERT J. UMBSTAETTER, 2130 Le Roy Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,168. Administration. [Seal.] 14-31

**Legal Notices.**

J. Clarence Price, Attorney  
In the Supreme Court of the District of Columbia.  
In re the Assignment of Charles R. Talbert.  
Equity No. 27,857.

J. Clarence Price, assignee, having reported the sale of the west forty feet seven inches on Maryland avenue by the full depth of lot numbered two in square numbered ten hundred and twenty-seven, in the city of Washington, District of Columbia, to Charles R. Talbert, for \$2,725, out of which is to be paid the sum of fourteen hundred ninety-one dollars and eighty-eight cents and accumulated interest thereon (the amount of the first trust on said property), it is this 31st day of March, A. D. 1908, ordered by the court that said sale be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of May, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named date in The Washington Law Reporter. [Seal.] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-31

**SECOND INSERTION.**

Basil D. Boteler, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a., on the estate of Mary A. E. Stockton, otherwise known as Marian E. Stockton, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 25th day of March, 1908. SALLIE EVANS BOOKER, by Basil D. Boteler, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,121. Administration. [Seal.] 18-31

Lester & Price, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Ferdinand Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of March, 1908. MARGARET MILLER, 2330 Brightwood ave. N. W.; JOHN SHUGHRUE, 818 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,128. Administration. [Seal.] 18-31

Howard Boyd, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Herman H. Goetz, Deceased.  
Administration No. 15,048.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jennie Goetz, it is ordered this 25th day of March, A. D. 1908, that Marie Goetz, Salina Goetz, Albert Goetz, and Carroll Goetz, and others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 18-31

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

**W. C. Balderston and Barnard & Johnson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Robert H. Kaiser Complainant v. Julius A. Kaiser**  
**et al., Defendants. No. 27,292. In Equity.**

Upon consideration of the report of Walter C. Balderston and Edgar B. Sherrill, trustees, that they have sold the lots numbered 15 and 16 in Shepherd's subdivision of square west of square 623, improved by premises Nos. 821 and 823, N. J. Ave. N. W., to Philip Schwartz, for the price of sixty-five hundred dollars (\$6500.00), payable all cash. It is, this 24th day of March, A. D. 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 24th day of April, 1908. Provided a copy of this order be published once a week for three (3) weeks before said date

[Seal] in The Washington Law Reporter and The Evening Star. **ASHLEY M. GOULD, Justice.**  
 A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-31

**Walter C. Balderston, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Marianna M. Van Why**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **EMMA E. NORRIS**, 1004 Mass. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,086. Administration. [Seal.] 18-31

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Louis Schmidt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **AMELIA BARBARA SCHMIDT**, 702 7th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,181. Administration. [Seal.] 18-31

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Frank Courtis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **MAUDE C. COURTIS**, The Cairo, Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,046. Admn. [Seal.] 18-31

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Jacob Veihmeyer**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. **JACOB O. VEIHMAYER**, 488 10th st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,088. Administration. [Seal.] 18-31

**Legal Notices.**

**P. R. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Patrick Reddington, Deceased.**  
**No. 15,087. Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with the will annexed on said estate, by **Bridget Durken**, it is ordered this 24th day of March, A. D. 1908, that **Margaret McGowan**, of Cross Molina, Mayo County, Ireland, and **John Reddington**, of Killala, Mayo County, Ireland, and all others concerned, appear in said court on Tuesday, the 28th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-31

**Hugh T. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Bridget M. Wardell**, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1908. **PETER J. MCINTYRE**, by **Hugh T. Taggart**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,586. Administration. [Seal.] 18-31

**Henry W. Sohon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Denis J. Stafford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. **HELEN C. WHITTON**, 918 M st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,004. Administration. [Seal.] 18-31

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of **Theodore J. Mayer**, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 21st day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of March, 1908. **AMERICAN SECURITY AND TRUST CO.**, by **William A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,347. Administration. [Seal.] 18-31

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track and was struck by the fender attached to the front of the car." The car in that case was a street car on a suburban line, and the injury occurred about 10 o'clock in the morning of a clear day.

The circumstances in evidence in the case at bar are different, and while it may seem unlikely that the plaintiff could, in fact, have paused and looked and listened, with ordinary care, without seeing or hearing the coming train, it cannot be justly assumed, with the requisite certainty, that he must have seen or heard it had he done so.

In the absence of such certainty the question of his contributory negligence was one for the determination of the jury.

It was error to direct the return of the verdict for the defendant, and the judgment must be reversed with costs, and the case remanded for another trial.

*Reversed.*

**Discharge—Bankrupt as Agent for Wife Under Unrecorded Power of Attorney—Assignment of Stock—Fraudulent Transfer.**—Where upon motion to confirm a report recommending that a bankrupt be granted a discharge, it appeared that his adjudication was in 1905, that since November, 1898, he had acted as agent for his wife under an unrecorded power of attorney, and prior to the enactment of the bankruptcy act, 1898, was indebted to her for borrowed money, it was held *In Re Hedley*, 19 Am. B. R., 409, that written assignments by him in 1897 and 1901, of corporate stock held in his own name, to his wife, which stock was kept in a box with other papers belonging to her, are not fraudulent as to his creditors, though the wife had no actual knowledge of the assignments, and they will not defeat his right to a discharge.

**Pledge of Warehouse Receipts—No change of Possession—When No Equitable Lien Against Title of Trustee.**—In *Security Warehousing Co. v. Hand*, 19 Am. B. R., 291, the Supreme Court of the United States has held that, as the general law of pledge which requires possession by the pledgee prevails in the State of Wisconsin, receipts given by a bankrupt warehousing company, acknowledging the receipt of property when there was in fact no change of possession and scarcely any in form, are not entitled to the status of negotiable instruments, the transfer of which operates as a delivery of the property mentioned in them (distinguishing *Union Trust Co. v. Wilson*, 14 Am. R. R., 109); that a trustee in bankruptcy stands in the shoes of the bankrupt, and all property of the estate, unless otherwise provided in the bankruptcy act, 1898, is subject to all the equities impressed upon it in the hands of the bankrupt; but that in the circumstances of the case at bar, there being no valid pledge of the so-called warehouse receipts, no equitable lien arose in favor of the intervening holders thereof, which would take precedence of the title of the trustee in bankruptcy by virtue of sections 70a and 70e of the bankruptcy act.

**Master and Servant—Defective Appliances.**—Where a master puts into the hands of his servant an implement, which he ought to know is in a

dangerous condition, for such immediate and hurried use that the servant is likely to use it without opportunity to see the defect and the attending danger and to receive injury, the master is liable for any injury resulting therefrom. *Gulf, C. & S. F. Ry. Co. v. Griggs* (Tex.), 105 S. W. Rep., 486.

**Jurisdiction of Bankruptcy Court—Pledgee's Sale May not be Restrained.**—The Circuit Court of Appeals, Second Circuit, has held, in matter of *Mayer, Leslie and Baylis*, 19 Am. B. R., 356, that a bankruptcy court is without power to restrain a sale by the pledgee of property held by him under a valid agreement of pledge by the bankrupt and pursuant to its terms.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

J. B. Archer and W. W. Stewart, Solicitors  
In the Supreme Court of the District of Columbia.  
*Emily M. Dunbar v. Murray S. Dunbar et al.*  
No. 27,222, Equity Docket No. —.

The object of this suit is to obtain a divorce from the bond of matrimony between the complainant and the defendant, Murray S. Dunbar, because of the infidelity of said defendant. On motion of the plaintiff, it is, this 18th day of March, A. D. 1908, ordered that the defendant, Murray S. Dunbar, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

The Washington Post before said day. By the  
[Seal] Court: ASHLEY M. GOULD, Justice. True  
copy. Test: John R. Young, Clerk, by Wms. F.  
Lemon, Asst. Clerk. 12-3t

John Riddout, Attorney  
In the Supreme Court of the District of Columbia.  
*Edgar Buxton, Plaintiff, v. Channing Rudd, Defendant.* At Law, No. 49,147.

The object of this suit is to recover seventeen hundred dollars and interest and to have judgment of condemnation of certain shares of stock of the Intercontinental Correspondence University, property of the defendant, levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 18th day of March, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and

The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred C. O'Connell, Asst. Clerk. 12-3t

**Legal Notices.****Blair & Thom, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **John C. B. Davis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. **FREDERICK A. GORE DAVIS**, 1621 H St., Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,938 Administration. [Seal.] 12-31

**George E. Sullivan, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **James F. Scaggs**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. **EMMA L. EVERETT**, 133 12th St. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,137. Administration. [Seal.] 12-31

**Oscar Luckett, Attorney****In the Supreme Court of the District of Columbia,  
Holding a Probate Court.****In re Estate of Anna M. Devote.**

No. 13,698. Administration Docket —  
Upon consideration of the report of **Oscar Luckett**, administrator, filed herein on March 18, 1908, reporting the sale of lots (41) forty-one and (42) forty-two in **Anna M. Devote's** subdivision of part of square 825, as per plat recorded in Liber 28, at folio 85, of the records of the office of the surveyor of the District of Columbia, to **James Kane** for the sum of thirty-three hundred (\$3,300) dollars, it is by the court, this 16th day of March, A. D. 1908, ordered that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before April 17, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named day in *The Washington Law Reporter*. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 12-31

**Edwin Forrest and R. E. Mattingly, Solicitors****In the Supreme Court of the District of Columbia,  
John Maxey, Annie Dugan and William A. Carson,  
v. Anne T. Bramhall et al.****No. 27,624. Equity Docket, No. 61.**

The object of this suit is to perfect the title of the complainants by adverse possession, to part of lot No. 28 in square No. 539, in the city of Washington, District of Columbia, described as follows: Beginning for the said part at the distance of 16 feet from the southeast corner of said lot on south third street; thence running north along the front line of the lot 18 feet; thence west 100 feet to the rear line of said lot; thence south along said rear line 18 feet; thence east 100 feet to the place of beginning on south third street, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the plaintiffs, by their solicitors, **R. E. Mattingly** and **Edwin Forrest**, it is, this 16th day of March, A. D. 1908, ordered that the defendants, **Frank J. Bramhall** and **John T. Bramhall**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and *The Washington Herald* before said day. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 12-31

Justice blanks of every description for sale at this office.

**Legal Notices.****Herbert & Micou, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Letitia Tyler Sempie, Deceased.****No. 15,039. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by **Elizabeth Denison Williams**, of Washington, D. C., it is ordered, this 16th day of March, A. D. 1908, that **Mrs. Albert Goodwin**, **Robinson Tyler**, **Mrs. T. Gardiner Foster**, **Robert Tyler**, **Miss Mattie Tyler**, **James Tyler**, **Miss Martha T. Tyler**, **Mrs. Louis G. Young**, **Robert T. Waller**, **Letitia T. Tyler**, **Lewis Jones**, **Miss Mary Waller**, **John Tyler Waller**, **Miss Grace Tyson**, **Mrs. Gatewood**, and **Allan Tyson**, and all others concerned, appear in said court on Tuesday, the 21st day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Times* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than [Seal] thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-31

**Geo. Francis Williams, Solicitor****In the Supreme Court of the District of Columbia.  
Lulu Tippin, Plaintiff, v. Alice C. Burr et al., Defendants.****No. 27,612. Equity Docket No. 61.**

The object of this suit is to obtain a decree for the partition in kind or by means of a sale of certain real estate in the District of Columbia, of which **Richard S. Cain** died seized, namely: Part of lot 19 in **Rothwell and Naylor's** subdivision of square 425, known as premises 1159 Eighth street, N. W., in the city of Washington; part lot 28, all of lot 29 and part lot 30 in **King's** subdivision of "Long Meadows," known as premises 1242, 1244 and 1246 **Bladensburg road**, and lot 34 and part lot 35, in said **King's** subdivision, reference being made to the bill of complaint for a more complete description of all of said real estate. On motion of the plaintiff it is, this 19th day of March, A. D. 1908, ordered that the defendants, **Alice C. Burr**, **Lillie Dagen** and **Sallie Palmer**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and *The Evening Star* of Washington before said day. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 12-31

**W. L. Pollard and M. N. Richardson, Solicitors****In the Supreme Court of the District of Columbia.  
George A. Scott, Complainant, v. Henry Schroeder et al., Defendants. Equity, No. 27,627.**

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18 by the full depth of 80 feet of said lot, being the same property conveyed to complainant by deed in Liber 823, folio 69 et seq., of the land record of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof for more than twenty-two years. On motion of the plaintiff, it is, this 18th day of March, A. D. 1908, ordered that the defendants, **Henry Schroeder**, if living, or, if dead, the unknown heirs, alienes, and devisees of said **Henry Schroeder**, cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks during the first month, and twice a month during the next two months in *The Washington Law Reporter* and *The Evening Star* before said day. By the Court: **ASHLEY M. GOULD**, Justice. True copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. mar. 20, 27; apr. 3; may 8, 15; June 12, 19.

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street, N. W.



**Legal Notices.**

**H. Winship Wheatley, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Josephine Guest, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of March, 1908. JNO. B. COLLAHAN, JR., 1011 Chestnut st., Phila., Pa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,022. Administration. [Seal.] 12-3t

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Michigan, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry H. Clapp, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 16th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 16th day of March, 1908. ALBERT B. RUFF, Natl. Bank of Washington; GEO. R. SPALDING, Jones Bldg., Detroit, Mich. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,989. Administration. [Seal.] 12-3t

**Harry S. Welch, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James E. Nichol, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of March, 1908. JAMES W. NICHOL, 508 8th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,141. Admn. [Seal.] 12-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah S. Sampson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. MARY C. SMITH, 1622 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,989. Administration. [Seal.] 12-3t

**Newton & Gillett, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Lucille Carpenter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 9th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. SARAH A. CARPENTER, 207 2d st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,077. Administration. [Seal.] 12-3t

**Legal Notices.**

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of Allan Gilmour, late of the city of Washington, D. C., deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 10th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under the hand of said administrator this 17th day of March, 1908. THE MORTON TRUST COMPANY, 38 Nassau st., New York, N. Y., by Blair & Thom, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,807. Administration. [Seal.] 12-3t

**William D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Walter Paris, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday the 20th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies, or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 17th day of March, 1908. NATIONAL SAVINGS AND TRUST COMPANY, T. R. Jones, Pres., by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,162. Administration. [Seal.] 12-3t

**E. H. Thomas, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles Schnebel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of March, 1908. EMMA SCHNEBEL, 403 Fla. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,120. Administration. [Seal.] 12-3t

**FOURTH INSERTION.**

**Henry H. Glassie, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Louise A. B. Hughes, Deceased.**  
**No. 14,732. Administration Docket —**

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 3d day of March, 1902, purporting to be the last will and testament of Louise A. B. Hughes, deceased, having been returned as to Clara C. Mitchell, Marian G. Wilson, Annie C. Grief, Sumpter Calvert, Charles H. Hiern, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma T. Brown, Kittle White, Pattie Weeks, and unknown heirs at law and next of kin of Louise A. B. Hughes, "not to be found," it is, this 13th day of March, 1908, ordered that the issues be set down for trial on the 15th day of April, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said

issues is (whether said paper writing was procured by fraud), etc., etc. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 11-4t



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### CASES DECIDED BY THE COURT OF APPEALS.

#### Insurance Policy—Statements in Application—Release—Evidence of Physician.

In Prudential Insurance Company v. Lear the action was upon a policy of insurance. The defendant contested its liability on the ground of certain alleged misrepresentations in the application for insurance, and also set up a release purporting to have been made by the insured. One of the assignments of error was to the refusal of the trial court to direct a verdict for defendant, and another to the exclusion of the evidence of a physician who had treated the insured. The judgment below was for the plaintiff, and the Court of Appeals affirms the judgment in an opinion by Mr. Justice Robb.

#### Contracts—Judgment for Defendant on Agreed Statement of Facts Reversed and Judgment for Plaintiffs Directed.

In Dudley et al. v. Owen, the suit was to recover the sum of \$10,000 and interest. The case was heard by the trial court without a jury, and judgment rendered for the defendant. The case involved the interpretation of a contract between the plaintiffs and the defendant whereby the former were to receive certain compensation for

professional services, which was to be paid by defendant out of the sum received by him under a contract between himself and one Vaile. Vaile was employed professionally by the Council of the Cherokee Nation, and defendant was engaged by him to assist in the prosecution of the matter. The agreed statement of facts is set out in full in the opinion of the Court of Appeals, delivered by Mr. Justice Robb, and it is held that the court below erred in its interpretation of the contract between plaintiffs and defendant. The judgment is reversed, and the entry of a judgment for plaintiffs for \$10,000 and interest is directed.

#### Appeals—Motion to Dismiss Overruled.

In District of Columbia v. Blackman the appellee moved to dismiss the appeal for the reason alleged that the bill of exceptions in the record was settled after the time within which it could be done under the rules. The extended time for settling the bill of exceptions expired February 20, 1908. The record contained a statement that it was submitted to the court on February 18, though the date of approval by the trial judge was March 6, 1908. The motion was denied, in an opinion by Mr. Chief Justice Shepard, holding that the bill having been submitted in time, the trial court could have retained it for the time necessary to enable him to determine its correctness, and his approval could have been made *nunc pro tunc*.

THE Supreme Court of the United States has affirmed the decision of the Court of Appeals of this District in the case of Allemannia Fire Insurance Co. v. Firemen's Insurance Co., to the use of Wolfe, receiver. The action was brought by the receiver of an insurance company rendered insolvent by losses sustained in the Baltimore fire, upon a contract of reinsurance. The reinsuring company denied liability by reason of the insolvency of the insuring company, but this contention was denied by the trial court, and its judgment was affirmed by the Court of Appeals. 34 Wash. Law Rep., 754. This judgment is in turn affirmed by the Supreme Court, in an opinion by Mr. Justice Peckham.

In Lippard v. Humphrey, the appeal was from a decree of the Court of Appeals affirming the judgment of the Probate Court admitting a will to probate after contest. 34 Wash. Law Rep., 788. It appeared the testatrix was an illiterate woman, and it was contended by the caveators that it was necessary, in making proof of due execution, to show that the will was read over to her. This contention was denied by the trial court and by the Court of Appeals. The decree is affirmed, in an opinion by Mr. Chief Justice Fuller.

# Court of Appeals of the District of Columbia.

LEWIS A. GRIFFITH, EXECUTOR,  
APPELLANT,

v.

WILLIAM W. STEWART.

WILLS; POWER TO EXECUTOR TO SELL; CONTRACT FOR PURCHASE OF REAL ESTATE; SPECIFIC PERFORMANCE; SUIT BY EXECUTOR; CONVERSION; AGENCY; RATIFICATION; FORFEITURE; TIME OF ESSENCE OF CONTRACT; WAIVER; UNDISCLOSED AGENCY.

1. Where a will authorizes the executor named therein to have full power over testator's entire estate, and contains specific directions to the executor to sell the real estate and dispose of the proceeds as directed by the will, though not in terms conferring upon the executor power to convey, the power to sell and distribute the proceeds implies the power to convey, in order that the proceeds may become available for distribution under the will.
2. In such case the legal estate in the property passes to the executor and not to the heirs.
3. A contract for the sale of land in Maryland is a contract of that State, and the laws of that State must govern in ascertaining the rights of the parties.
4. Under the laws of Maryland an executor may maintain an action to enforce the specific performance of a contract for the sale of real estate made by the testator during his lifetime, and to execute a conveyance that will pass the legal title to such real estate; and to such an action the heirs of the testator are not necessary parties.
5. A suit for the specific performance of a contract for the sale of real estate is in personam, and is properly brought in this District, where the defendant resides, and where personal service may be had, though the land is located in Maryland.
6. In equity, a binding contract for the sale of real estate effects a conversion of the property, and thereafter the vendor holds the land as trustee for the vendee, and the vendee holds the purchase money as trustee for the vendor; and on the death of the vendor before final consummation of the transaction his personal representative is entitled to receive the purchase money for the property.
7. The ratification by a principal of a contract for the sale of real estate made by the agent, though such ratification be contained in a separate instrument of writing and not on the contract itself, has the same binding effect as the signature of the principal to the contract itself would have had, notwithstanding in the power of attorney under which the agent negotiated the sale the principal agreed to sign the contract of sale.
8. Where a contract for the sale of real estate provided for payment of \$500 in cash and the balance of one-half the purchase price on a certain date, and if not so paid the \$500 was to be forfeited and contract of sale and conveyance to be null and void, but there was no specific provision authorizing the vendee to elect to forfeit the contract, held that while the vendor, upon failure of the vendee to comply with his agreement, might declare a forfeiture, no such right attached to the vendee.
9. While time may be of the essence of a contract for the purchase of real estate, the vendee can not defeat a suit for specific performance brought against him by the fact that by reason of the death of the vendor two days before the time fixed for completing the contract, the plaintiff was not in a position to perform his part of the agreement, where no tender of performance was made by the vendee and he admits that at that time he had abandoned all intention of complying with the contract.
10. The failure of both parties to a contract to perform on the day fixed is equivalent to a waiver by each of the default of the other.
11. A vendee can not defeat specific performance on the ground that in making the contract he was acting as agent for another where he failed to disclose such agency.

No. 1774. Decided April 1, 1903.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,484, dismissing a bill to enforce the specific performance of a contract of purchase of real estate. Reversed.

Mr. C. H. MERILLAT and Mr. GEO. R. GAITHER for the appellant.

Mr. E. H. THOMAS and Mr. J. B. ARCHER, Jr., for the appellee.

Mr. Justice VAN ORSDDEL delivered the opinion of the Court:

This suit was brought in the Supreme Court of the District of Columbia by the appellant, plaintiff below, as executor of the estate of one Alfred W. Ball, against the appellee for the specific performance of a contract. It appears that in June, 1903, the appellee, referred to hereafter as defendant, entered into a contract to purchase the farm of Ball, situated in Prince George County, Maryland. The contract was executed on the part of Ball by plaintiff Griffith, who was acting under a power of attorney from Ball appointing Griffith as his agent for the purpose of negotiating the sale of said land. The contract provided that \$500 should be paid in cash on the purchase price, and the balance of one-half of the purchase price should be paid on November 7, 1903. The remaining one-half of the purchase price was to be paid in five equal annual instalments, with interest thereon at 6 per cent per annum. The contract provided that Ball should remain in possession until November 7, 1903, when a deed should be executed by him and delivered to defendant, and defendant should execute notes to be secured by a purchase mortgage on the land to Ball to secure the deferred payments. The \$500 was paid on the signing of the contract, but defendant failed to make the payment due on November 7th.

On November 5th, two days before payment under the contract became due, Ball died, leaving a will in which the plaintiff was named as executor and by its terms vested with full and complete power over the entire estate of Ball, real, personal, and mixed. The will was duly presented for probate in the Probate Court of Prince George County, Maryland. The court ordered plaintiff to carry out this contract, and in compliance with said order, plaintiff demanded performance of the same by defendant, which was refused. Upon such refusal, plaintiff executed a deed and tendered it to defendant, demanding a compliance with the terms of the contract. Defendant still refused to carry out the terms of the agreement. Plaintiff, as executor, then instituted this suit to compel defendant to specifically perform the conditions of the contract.

At the conclusion of the trial, the court, on February 21, 1906, entered a decree in favor of plaintiff, in which the court held, among other things, that the agreement in complainant's bill, dated the 5th day of June, 1903, ought to be specifically performed and be carried into execution, and, in accordance with this finding, the court directed plaintiff to execute and deliver a deed to the defendant and the defendant to execute and deliver the notes and a mortgage, as provided for in the contract. On March 13, 1906, the court, upon a showing that defendant refused to comply with the terms of the decree, entered judgment against the defendant for the amount of the purchase price then due, and appointed a trustee to receive the deed from plaintiff and execute the notes and mortgage called for in the decree to be executed by defendant.

On March 20, 1906, counsel for defendant filed a motion to vacate the decree and for a new trial. This motion was allowed and a rehearing granted,

upon which the court entered the following decree: "The decree heretofore entered in this cause having been vacated, new testimony taken, and a rehearing had, the court is of opinion that the heirs and devisees of Alfred W. Ball are indispensable parties and that the deed tendered by the complainant was insufficient to pass the title, for which reasons alone the former decree was erroneous, and the bill must be dismissed. It is by the court this 2d day of July, 1906, adjudged, ordered, and decreed that the said bill be and the same is dismissed with costs to be taxed by the clerk." From this decree plaintiff appealed to this court. The errors assigned by plaintiff are as follows:

"1. That the lower court erred in vacating its decree in favor of appellant (plaintiff below) and making a final decree in favor of appellee.

"2. That the court below erred in holding that the heirs were indispensable parties, and that for this reason its decree in favor of complainant was erroneous."

It will be observed that in the decree appealed from, the court dismissed the bill of plaintiff on the ground *alone* that the heirs were not made parties, and that the executor had no power to execute a deed for the land in controversy.

The material part of the will of Ball, under which plaintiff acquires his authority to act, reads as follows: "I direct, authorize, and empower Dr. Lewis A. Griffith my executor herein named, to have full and complete power and authority over my entire estate, real, personal, and mixed of every kind and description and wherever being or situate, and I hereby further direct, authorize, and empower him, the said Lewis A. Griffith, my executor, to sell my real estate of which I may die seized and possessed at the time of my death wherever the said real estate may be situate at public sale after one month's notice by due publication of said sale and of the time, place, and manner of said sale, the said real estate to be sold upon such terms and conditions as my executor shall deem proper and expedient." The testator then devises the proceeds derived from the sale of his real and personal property to various persons and charities named in the will.

It is urged by counsel for plaintiff that, under this provision of the will, the legal title to all the estate of which Ball died seized passed to the plaintiff as executor. We are impressed with the force of this contention. No part of the real estate of Ball was devised to his heirs. The legal title to the property belonging to the estate of Ball never passed to his heirs. What passed to the devisees under the will was the proceeds that should be derived from the sale of his property, real and personal. The real estate not only passed to the executor, but minute directions were given as to its disposition. Where such trusts and powers are vested in an executor, as appear from the terms of the will in question, the legal estate passes to the executor and not to the heirs. The trust would be an empty and impotent one if, after vesting in the trustee the power to sell, under specific directions as to how the sale shall be conducted and the proceeds distributed, no power is vested in the trustee to pass title. Such is not the law. It has been held by this court in the case of *Rathbone v. Hamilton*, 4 App. D. C., 475; 22 Wash. Law Rep., 766, that where the will directed the executor to sell the real and

personal estate and distribute the proceeds in a certain manner, the legal estate vested in the executor by implication. The court in its opinion said: "It has been contended by the plaintiff here, the present appellant, that even assuming that Mrs. Elkin had power to dispose of the property by will, the executor named in the will had no power of sale, and that the sale made by him, therefore, was simply void. But in this we do not agree. If the right to make the devise of the estate existed, the testatrix directed her property, real and personal, to be sold, and after deducting funeral and other expenses, she directed how the proceeds of the sale should be distributed and paid out. The making of this distribution was a proper duty of the executor; and it is clear, we think, that the executor named in the will would have power to sell and convey the real estate, as he would have of the personal estate, raised by necessary implication. This would seem to be the settled construction of similar devises or directions to sell without express power conferred. *Magruder v. Peter*, 5 Gill & John., 217; *Peter v. Beverly*, 10 Pet., 532; *Taylor v. Benham*, 5 How., 233." Thus, it has been held in this jurisdiction that, even where no authority was conferred upon the executor by the terms of the will to convey the real estate, where the will provided that it should be sold and the proceeds distributed by the executor, the power of the executor to convey will be implied. It seems to be well settled that such authority may arise by implication, when necessary to properly execute the conditions of a trust. In *Doe, Lessee of Poor, v. Considine*, 6 Wall., 458, the court said: "When a trust has been created, it is to be held large enough to enable the trustee to accomplish the objects of its creation. If a fee simple estate be necessary, it will be held to exist though no words of limitation be found in the instrument by which the title was passed to the trustee, and the estate created." The rule is well expressed in 2 *Jarman on Wills*, 156: "Trustees take exactly the estate which the purposes of the trust require; and the question is not whether the testator has used words of limitation, or expressions adequate to carry an estate of inheritance, but whether the exigencies of the trust demand the fee simple, or can be satisfied by any and what, less estate." In the case at bar, the directions to the executor to sell and dispose of the real estate are most explicit, and while the will does not in terms confer upon the plaintiff, as executor, the power to convey the real estate, the power to sell and distribute the proceeds implies the power to convey, in order that the proceeds may become available for distribution under the will.

This suit was brought by the executor and former agent of the decedent. The land is in Maryland, and it is a Maryland contract. The laws of that State must govern in ascertaining the rights of the parties. Sec. 103, art. 93, of the Maryland Code provides, in part: "Executors and administrators shall have full power to commence and prosecute any personal action whatever, at law, or in equity, which the testator or intestate might have commenced and prosecuted, except actions of slander." A similar provision is contained in sec. 327 of the Code of the District of Columbia. Sec. 81, art. 93, Code of Maryland, provides: "The executor or administrator, including the administrator de bonis non, of

a person who shall have made sale of real estate, and have died before receiving the purchase money, or conveying the same, may convey said real estate to the purchaser, and his deed shall be good and valid in law, and shall convey all the right, title, claim and interest of such deceased person in such real estate as effectually as the deed of the party so dying would have conveyed the same; provided, the executor or administrator of the person so dying shall satisfy the Orphans' Court granting his administration that the purchaser has paid the full amount of the purchase money." The above statutes of Maryland, applicable to this case, invest an executor with full power to bring and prosecute any personal action, either at law or in equity, that the testator could have commenced and prosecuted. They also authorize an executor to bring an action to enforce the specific performance of a contract for the sale of real estate made by the testator during his lifetime, and to execute a conveyance that will pass the legal title to such real estate. The statutes contain no provision for the joining of the heirs as parties plaintiff in such an action, but declare in express terms that the executor shall bring personal actions in his own name.

The action here is one in personam, and was properly brought in this District, where defendant resides, and where personal service could be secured. In *Hart v. Sansom*, 110 U. S., 151, the court said: "Generally, if not universally, equity jurisdiction is exercised in personam, and not in rem, and depends upon the control of the court over the parties by reason of their presence or residence, and not upon the place where the land lies in regard to which relief is sought. Upon a bill for the removal of a cloud upon title, as upon a bill for the specific performance of an agreement to convey, the decree, unless otherwise expressly provided by statute, is clearly not a judgment in rem, establishing a title in land, but operates in personam only, by restraining the defendant from asserting his claim and directing him to deliver up his deed to be cancelled or to execute a release to the plaintiff. *Langdell Eq. Pl.* (2d ed.), secs. 43, 184; *Massie v. Watts*, 6 Cranch, 148; *Orton v. Smith*, 18 How., 263; *Vandever v. Freeman*, 20 Tex., 334." The same rule was announced by this court in *Stone v. Fowlkes*, 29 App. D. C., 379: 35 Wash. Law Rep., 261.

We are of the opinion that, as to the particular part of the estate of Ball involving the land in question, the sale effected a conversion, and thereafter Ball held the land as trustee for defendant; that, upon the execution of the contract, Ball's interest, as represented by the unpaid balance of the purchase price, became personalty or a chose in action, and passed to the plaintiff executor as such. The \$500 cash payment was, by the express language of the contract, a part of the purchase price. Ball retained possession to secure the payment of the balance of one-half of the purchase price before executing a formal conveyance to the defendant. Under the sale, the land became the property of defendant, and the agreed purchase price became the property of Ball. In equity, Ball held the land as trustee for defendant, and defendant held the purchase price as trustee for Ball. If the contract had been performed before Ball's death, the purchase price, with the securities for the deferred payments, would have passed as personalty to Ball's representative. Ball died before the date

for performance arrived. Hence, the contract, a mere chose in action, passed to plaintiff, as executor. Defendant, under the contract, is now bound to turn over the purchase price to plaintiff as the personal representative of the vendor, and plaintiff is bound to pass to defendant the legal title to the land, which was held in trust for him by Ball until his death, and since that time by plaintiff, as Ball's personal representative. In the case of *Lewis v. Hawkins*, 23 Wall., 119, where Hawkins purchased certain lands from Lewis, giving his promissory notes payable at a future date, and Lewis, in return executed a bond for a deed, the court said: "Upon the execution of the notes and the title bond between Lewis and Hawkins, Lewis held the legal title as trustee for Hawkins, and Hawkins was a trustee for Lewis as to the purchase money. Hawkins was *custui que trust* as to the former and Lewis as to the latter. The seller under such circumstances has a vendor's lien, which is certainly not impaired by withholding the conveyance. The equitable estate of the vendee is alienable, descendible, and devisable in like manner as real estate held by a legal title. The securities for the purchase money are personalty, and in the event of the death of the vendor go to his personal representative." The rule of law, applicable where notes and a bond were exchanged to secure ultimate performance, will apply with equal force to a contract between the parties for the same purpose. In other words, a contract of sale of land converts the estate of the decedent into personalty, over which the personal representatives have full control. *Longwell v. Bentley*, 23 Penn., 99.

It is urged by counsel for defendant that the contract was not ratified by Ball in the manner provided for in the power of attorney from Ball to plaintiff. The power of attorney, after appointing plaintiff as Ball's agent to negotiate the sale of the land in question, says: "I also agree to sign the contract in writing ratifying and approving of the sale to be made of the said real estate, provided the sum of four hundred dollars be paid to me." Instead of signing the contract, Ball ratified the sale by the following instrument in writing:

"JUNE 19, 1903.

"I, Alfred W. Ball, having received from my duly authorized agent and attorney, Dr. L. A. Griffith, the sum of four hundred dollars, do hereby ratify and confirm the sale made by him to W. W. Stewart of my real estate near Meadows, Pr. Geo. County, Md. This is with the understanding that if said sale is consummated and one-half of the purchase money be paid cash, that Dr. L. A. Griffith, my agent and attorney, shall pay out of his commission one-half of the cost of surveying and attorney's fee—the other half by W. W. Stewart—otherwise I am to pay the cost of surveying and attorney's fees.

"ALFRED W. BALL."

With this provision in the power of attorney, ratification by Ball became necessary in order to make the conditions of the contract binding upon him. It is not clear just how defendant can avail himself of the failure of Ball to sign the contract as a defense, when Ball not only ratified the contract by the above instrument, but is here affirming it by his legal representative. The ratification by a separate instrument in writing has the same binding effect against Ball as his signature to the contract itself would have had. Since, there-

fore, this provision in the power of attorney was inserted for the purpose alone of connecting Ball with the agreement in such way that the contract could be enforced against him, and as no effort has been made, either by Ball or his legal representative to evade the contract, the ratification is sufficient.

It is also contended by counsel for defendant that the contract was an optional one and can not be enforced for lack of mutuality. It contains the following provision: "In case the remainder of the first half of the purchase price be not paid on the 7th day of November, then the \$500, so paid to the said Griffith, is to be forfeited and the contract of sale and conveyance to be null and void and of no effect, otherwise remain and be in full force." It is insisted that defendant had no contract with either Griffith or Ball unless he elected to pay the balance of one-half of the purchase price on the day named in the contract. It is well settled that, when the amount paid in cash is stipulated to apply on the purchase price, and no specific provision appears authorizing the vendee to elect to forfeit the contract, a provision such as the above will permit the vendor, upon the failure of the vendee to comply with his agreement, to declare a forfeiture, but no such right attaches to the vendee. In *Hazleton v. Le Duc*, 10 App. D. C., 379; 25 Wash. Law Rep., 280, this court, considering a contract similar to the one here under consideration, said: "The contract in this case recites that appellee's attorney, who signed it, had received of the defendant 'the sum of two hundred dollars on account of the purchase money,' of the real estate in question, 'this day sold to him (appellant) by me (appellee).' The terms of the sale are set forth, and there is added 'terms of sale to be complied with in fifteen days or deposit will be forfeited.' Immediately following the signature of appellee by his attorney, and on the same paper, is the following undertaking, signed by appellant: 'I agree to make the above-mentioned purchase on terms as stated.' The only construction that can reasonably be put upon this language is that the parties intended and understood that there was a then present sale of the property; that appellee agreed to sell and appellant agreed to purchase on the terms mentioned in the contract. The two hundred dollars were not paid to buy an option to purchase within fifteen days, but as a part of the purchase money for the property then purchased by appellant. To construe this instrument to be an option to purchase would require the rejection of the language used in it, and the substitution therefor of words of different meaning. Had the memorandum signed by the appellant read, 'I agree to elect to make the above mentioned purchase on terms as stated within fifteen days, or forfeit the deposit made,' it would have been an option to purchase. The memorandum which he did sign is of a very different signification from the one supposed. . . . These words were inserted for the benefit of the vendor, and gave him the option, if the terms of the sale should not be complied with in fifteen days, of treating the contract as void and retaining the two hundred dollars, or treat it as valid and sue for the balance of the purchase money, or for such damages as he might suffer from a breach of the contract by the vendee." It seems to be the well settled rule that where a clause is inserted in a

contract, such as the one here in question, it is placed there for the benefit of the vendor, and affords him the option, either of declaring the contract forfeited upon failure to comply with its terms by the vendee, or to enforce the contract. *Fry on Specific Performance*, sec. 118; *Dana v. St. Paul Investment Co.*, 42 Minn., 194; *Dooley v. Watson*, 1 Gray (Mass.), 415; *Wilcoxson v. Stitt*, 65 Cal., 596.

In *Mason v. Caldwell*, 5 Gilman (Ill.), 196, where suit was brought for the specific performance of a contract to convey real estate, the bond for the conveyance contained the following clause: "But should the said John R. Caldwell, or his assignee, fail to pay the said sum of money, specified in said notes, within ten days after the same become due, he hereby forfeits all claim to said lots, and all moneys paid thereon; and this bond, in such event, shall be void, both in law and equity, and the title to said lots shall continue in the original proprietor, as if no sale had been made." The court in its opinion said: "The defendant contends that he can take advantage of this clause, and because he did not pay the money as he agreed to do, he is exonerated from paying it at all. It is argued that because the obligee, in the event of nonpayment, may treat the bond as determined, mutuality requires that the obligor should have the same privilege. This argument refutes itself. It is as much a *felo de se*, as it would make the bond. To admit the defendant's position is to leave everything in his own hands. It allows him to defeat or make the bond operative, as may best subserve his interest, without any discretion on the part of the obligee. It converts the bond into a naked proposition absolutely binding on the seller, but which the purchaser may accept or reject by the payment or nonpayment of the money. By thus putting the entire control in the hands of the latter, the mutuality is destroyed. It was the undoubted intention of both parties, when they inserted this clause, to provide a penalty to insure a prompt performance by the purchaser. By performance he leaves no discretion in the hands of the obligee, but has a right to enforce the bond, while, if he does not, he agrees to leave it optional with the other party to avoid the contract or not. Here was a real mutuality; for the purchaser had the first discretion, and if he placed himself in the power of the other party, it was by his own voluntary neglect to pay the money, as he had bound himself to do, and it was but a just penalty for violating his obligation."

In the case at bar the option clearly was one running in favor of the vendor. There was no lack of mutuality. Defendant imposed upon himself the duty of making payment, as he had agreed to do. Compliance on his part vested him with power to compel specific performance had plaintiff failed to respond to the obligations imposed upon him by the contract. The contract was one for the purchase of real estate. Defendant was in position to prevent plaintiff from taking advantage of the option by making payment and executing the notes and mortgage, as he had agreed to do. He can not, however, come into a court of equity and justify his own default by assuming to himself a right that belonged exclusively to the plaintiff. No doubt, if plaintiff had elected to have availed himself of the option, it would have been most satisfactory to defendant, as it would have

relieved him of any liability for his own default; but, since plaintiff is here insisting upon a full performance of the contract, defendant can not avail himself of the discarded option of plaintiff to defeat the action which plaintiff in the exercise of his rights elected to bring.

It is urged that time is of the essence of this contract, and, as plaintiff was not in position to perform his part of the agreement on November 7, 1903, he is thereby estopped from bringing an action to compel specific performance on the part of the defendant.

Time may be of the essence of a contract to purchase real estate. It was of the essence of this contract. If defendant had appeared on the 7th of November and tendered performance, and plaintiff had failed to comply with the terms of the contract within such reasonable time as he could, owing to the unexpected contingency arising from the death of Ball, he would have a different standing in a court of equity. On the contrary, the evidence discloses that defendant not only made no effort to comply with his agreement, but he admits that at that time, he had abandoned all intention of complying with its terms. Under these circumstances he is not in position now to come into a court of equity and defend against the enforcement of his contract on the mere presumption that, owing to the contingency arising from Ball's death, of which he admits he had no knowledge on November 7, 1903, plaintiff was not in position to carry out his part of the agreement. Counsel for defendant rely upon the rule announced by the Supreme Court in *Marble Co. v. Ripley*, 10 Wall., 339, where the court said: "When, from personal incapacity, the nature of the contract, or any other cause, a contract is incapable of being enforced against one party, that party is equally incapable of enforcing it specifically against the other, though its execution in the latter way might in itself be free from the difficulty attending its execution in the former." Defendant might be in position to invoke this rule had he tendered performance and found plaintiff not only unprepared to carry out his part of the agreement, but unable to do so. But that is not this case. One party can not refuse or fail to do his part at the proper time and defend against the action of the other party by proving contingencies that might have prevented the other party from complying with his part of the agreement. One party can not make his own negligence the basis for defeating the other party. When one party has been negligent in performing his part of the agreement, he is estopped from coming into a court of equity and basing his defense upon contingencies that might have prevented the other party from keeping his agreement had he been called upon to do so.

Assuming, however, that plaintiff was not in a position on November 7, 1903, by reason of the death of Ball, to carry out his part of the agreement, fortuitous circumstances of this kind, over which plaintiff had no control, will not defeat the right of recovery, or the enforcement of specific performance. In the case of *Brown v. Slee*, 103 U. S., 828, where the court had under consideration a contract providing for the repurchase of certain land within a given date, the court said: "It is claimed on the part of the appellants, however, that to enable the executors to recover they must prove both an election to sell and the

delivery or tender of a deed on the day fixed for performance.' As we have already shown, it needed no tender of a deed on the day to require Brown to repurchase. It was enough if, before the expiration of the time, the executors made their election that he should do so, and signified it to him in proper form. That being done, the rights of the parties respectively under the contract were fixed. Brown became bound to repurchase and pay the money, and the executors to receive the money and reconvey. Either party could then require the other to perform, and neither could insist on the default of the other, so long as he himself was behind in his own performance. Brown could not demand a deed until he tendered the money, and the executors could not require the money until they had offered a deed. Neither party offered to perform on the day, and, therefore, one was as much in default as the other. Such being the case, either party, after relieving himself from his own default by performance or an offer to perform, could require the other to perform within a reasonable time. Neither could insist that the other had lost his rights under the contract until he had himself done what he was bound to do. The failure of both parties to perform on the day was equivalent to a waiver by each of the default of the other. The executors did offer to perform within a reasonable time after the day, and we think are entitled to recover." This, we think, applies directly to the case at bar. While both parties failed to perform on the 7th day of November, 1903, the failure of each "was equivalent to a waiver by each of the default of the other." Plaintiff, owing to the contingency caused by the death of Ball, was unable to perform his part of the agreement. As soon as possible, and within a reasonable time, he secured proper authority, and tendered performance, and, under these conditions, is entitled to an enforcement of the contract.

It is contended by defendant that the real purchaser in this case was the Maryland Oil Company, and that defendant in making the contract was acting as its agent. There is a conflict in the evidence on this point. We think the defendant has failed to establish the fact that he disclosed his agency, if one existed, either to plaintiff or Ball at the time the contract was made. It is admitted that about the time when the payment was to be made, November 7, 1903, when defendant had decided to abandon his contract, he notified plaintiff that he was not the real purchaser, but only the agent of the oil company. This was too late. It was the duty of the defendant to have disclosed his agency at the time the contract was made. He could not make a contract of which he could avail himself if it proved profitable, and, by concealing his agency, disclaim if it proved unprofitable. The trial court found against this contention of the defendant, and we agree with that conclusion. It is supported by the evidence.

A number of other objections of minor importance were advanced by counsel for defendant, which we have not deemed of sufficient importance to consider at length. Inasmuch as the Supreme Court of the District in its original decree found generally for the plaintiff upon all the issues involved in the case, and upon rehearing vacated that decree on the ground alone of defect of parties plaintiff, the two decrees, when considered together, are equivalent to a finding for

the plaintiff on the facts. We have carefully examined the evidence disclosed in a voluminous record, and agree with the conclusion reached by the lower court. For the error committed in granting a rehearing upon the sole ground that the heirs of Ball should have been made parties plaintiff, the judgment is reversed, with costs, and the cause remanded with instructions to enter judgment for the plaintiff, as prayed for in the bill. Reversed.

CHARLES F. CONSAUL ET AL., ADMRS.,  
APPELLANTS,

v.

H. S. CUMMINGS, ADMR.

H. S. CUMMINGS, ADMR., APPELLANT,

v.

CHARLES F. CONSAUL ET AL., ADMRS.

Nos. 1778 and 1779. Decided March, 1908.

APPEAL and cross-appeal from a decree of the Supreme Court of the District of Columbia, in Equity, No. 20,802, confirming reports of the auditor in a suit for partnership accounting. Modified and affirmed.

Mr. R. GOLDEN DONALDSON and Mr. CHARLES F. CONSAUL for appellants.

Mr. C. C. TUCKER and Mr. J. MILLER KENYON for appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

On September 16, 1899, Horace S. Cummings, as administrator of the estate of George B. Edmonds, deceased, filed a bill against Gilbert Moyers for an account and settlement of the affairs of a special partnership alleged to have been entered into between said Edmonds and said Moyers for the prosecution of certain claims against the United States. The matter of the account was referred to the auditor, who filed his report August 20, 1902, stating a balance due Edmonds for his share of fees collected on said claims to that time of \$10,601.04. Defendant's exceptions to the report, save as to the collection in the case of R. M. Johnson, administrator, were overruled, and decree was entered accordingly. Defendant Moyers having died after the entry of the decree, his administrators made themselves parties and prosecuted an appeal to this court.

In that appeal it was held that there was a special partnership agreement including the cases in the auditor's report as confirmed; that the same had not been abandoned by Edmonds; that Moyers was not entitled to claim any compensation for special services. On those points, the exceptions were held to have been properly overruled. But it was held that there was error in refusing credit to Moyers for expenses, under the agreement, in unsuccessful as well as successful cases; and also in refusing interest on the sum of \$1,470 shown to have been advanced to Edmonds by Moyers. For these errors the decree was reversed with direction to refer the account to the auditor to ascertain the said expenses, and restate the account allowing the defendant credit therefor as well as for the interest aforesaid. *Consaul v. Cummings*, 24 App. D. C., 36: 32 Wash. Law Rep., 470.

Jurisdiction of the cause having been retained in the court below in order to take a further account in relation to collections made in alleged

partnership cases after the first reference, the auditor made a supplemental report on January 5, 1904, relating to some of these additional claims which he found to be embraced in said agreement, to which exceptions were filed by the defendants. On November 7, 1905, reference was again made to the auditor directing him to take into account the credits for expenses and interest as stated in the former opinion of this court, and also to inquire into and report further as to the claim of Johnson administrator being a partnership collection, and also as to credits claimed for fees paid local attorneys in two cases stated in the second report before referred to. The report of the auditor filed May 1, 1906, restated the account, charging Moyers with the amount stated in the first account, and crediting him with the expense and interest aforesaid. He restated also the second account reported January 5, 1904, making allowance of credit for parts of fees paid by Moyers out of collection in case of Thomas Kidd. The complainant and defendant excepted to certain items in this report. Other claims collected after the second reference were also referred to the auditor for inquiry and report. The report on these was filed December 21, 1906, and shows their inclusion in the partnership agreement, and a balance on account of their collection, due the complainant. Another report was made January 4, 1907, relating to a claim of Thomas Kidd in which one Barber, intervenor, claimed a fee. Allowing this fee, the remainder of the collection was reported as being a partnership account, and one-half of the same was allowed the complainant. Exceptions to these reports came on to be heard January 8, 1907, on behalf of both parties. These were each overruled, and a decree entered confirming the several reports. After directing payment by the receivers, who had been appointed to receive certain of the funds contained in the first account, to the complainant of certain amounts under the first reports as restated, the defendants were ordered to pay the complainant the balance of \$10,149.63. Both parties have appealed, and the two appeals will be considered together as constituting one case, though separately docketed. That of the defendants will first be considered.

1. The first, second, third, fourth, and fifth assignments of error seek to raise questions that were determined on the first appeal, and must be regarded as settled thereby.

2. The sixth assignment relates to the claim of the estate of Lucy A. Caldwell. It is sufficient to say of this claim that it appears as a partnership claim in the list furnished by defendant Moyers as comprising the Edmonds cases that had been prosecuted by him. It appears from the auditor's report and the evidence referred to therein, that the claim was prosecuted by Moyers until April, 1903. The administrators, Consaul and Ida Moyers, the latter being the daughter of defendant Moyers, were assistants in the latter's office. They were both attorneys admitted to practice in the Court of Claims at and before that time, and assisted Gilbert Moyers. Mrs. Caldwell died, and in July, 1903, her executrix retained one Ralph W. Haynes in the case and gave him an order to Moyers to deliver all the papers to Haynes for the further prosecution of the claim. Haynes agreed, however, to join Moyers with him in the prosecution of the claim. Moyers died June 13, 1903, with the case depending. Haynes then procured



a power of attorney to himself and Consaul and Ida Moyers authorizing them to prosecute the case. Haynes had entered an appearance in the case, and secured the substitution of the executrix as party plaintiff, and thereafter Consaul and Ida M. Moyers were entered by him as counsel for claimant. They filed a brief and made an oral argument. When the collection was made the fee of \$1,800 was divided as follows: Haynes received \$750 and Consaul and Moyers \$1,050.

One-half of the last amount was stated in the account as due the plaintiff. It appears from the evidence that the recovery in this case was largely due to the services of Consaul and Moyers, after the death of Gilbert Moyers, whose brief in the case was apparently insufficient. The question presented is whether, because they became the administrators of Gilbert Moyers, their services as attorneys were performed on his account.

The original contract was with Edmonds who associated Gilbert Moyers with him. The client ratified this employment of Moyers on her account by acquiescence. And while, after the death of Edmonds, her executrix might have transferred the prosecution of the claim to another, as she did, Gilbert Moyers would have been entitled to claim compensation for services rendered to that date, one-half of which would inure to the benefit of Edmonds' estate. Death finally ended Moyers' connection with the case. By consent of the client, his administrators might have been permitted to carry the litigation to a termination. But it does not appear that they did undertake to carry it on as administrators. Being attorneys they were retained by Haynes to prosecute the case which they did with success. As such they were entitled to compensation as well as Haynes, whose fee has been recognized as allowable to him. We think that Consaul and Moyers must be regarded as having prosecuted the case to final determination, not as administrators of Gilbert Moyers, but as attorneys for the claimant. We are of the opinion, therefore, that the auditor should have allowed to complainant, not one-half of the fee received by Consaul and Moyers, but only so much thereof as had been earned by Gilbert Moyers up to the time of his death. As Consaul and Moyers received more than Haynes, it is probable that this may have been taken into consideration in the division of the fees, in which they received \$300 more than Haynes. Moreover, Consaul testified that the services rendered in the case after the death of Gilbert Moyers amounted to not less than three-fourths of the whole.

3. The seventh assignment of error relates to the claims of Jane Edge and Herbert Smith, both of which, also, are contained in Moyers' list of the Edmonds cases. The contention is that these two cases come within the rule that has been applied in the Caldwell case above considered. The facts of the cases are, however, essentially different. The testimony shows that on November 21, 1901, Gilbert Moyers, Ida M. Moyers, and C. F. Consaul entered into an agreement whereby the two last named agreed to contribute their services to Gilbert Moyers in the prosecution of his business generally, beginning January 1, 1902, who was to defray all the incidental expenses. During the year 1902 Gilbert Moyers was to have one-half of all fees, the other half to go to his associates. After 1902 they were to receive two-thirds and Gilbert Moyers one-third of all fees, and the

expenses were to be paid in the same proportions.

The two claims of Edge and Smith had been prosecuted by Gilbert Moyers alone before this agreement was made. It was attempted to be shown that Gilbert Moyers abandoned the cases in 1902 because of the interest claimed on behalf of Edmonds, and new contracts were secured with the parties by Consaul and Ida M. Moyers. (Contract with Edge, August 25, 1902, and with Smith's administratrix May 18, 1903.) In the Edge case it appears that Gilbert Moyers wrote to the administratrix, enclosing the power of attorney and fee agreement with Consaul and Moyers for signature. He did not inform the administratrix that he had abandoned the case. On the contrary, he said: "As I. M. Moyers and C. F. Consaul, who are associated with me, have filed the previous briefs in this case, are familiar with all the details of it, and will have immediate personal charge of the conduct of the case before the court, the enclosed power of attorney to them is all right." Substantially the same course was pursued with the administratrix of Smith's estate on March 18, 1903. As these cases were pending when the agreement between the attorneys was made, they were governed thereby. Moyers had the right to make an agreement with his associates for a division of his part of the fees in the case, and in consideration thereof it became the duty of his associates to prosecute the same to the end. And if they rendered material services after the death of Moyers, any claim they would have for additional fees would be against his portion, a question that is not involved here. But they could not, under such conditions, appropriate Edmonds' portion also. We agree with the auditor that one-half of the fees collected in each case belongs to Edmonds; and, consequently, the court did not err in overruling the exception to their allowance in the account stated.

4. The eighth assignment of error, relating to the claims of Caldwell, Edge, and Smith, need not be considered, as the questions have been determined under the preceding assignment.

5. The ninth assignment of error relates to the refusal of the court to reopen the entire case for the purpose of introducing in evidence a letter alleged to have been written by Edmonds to Moyers December 17, 1889, containing a promise to furnish a list of his (Edmonds') claims, and of redetermining the question whether the first adjudicated claims in the case were really partnership cases. Ordinarily, it is within the discretion of the court to reopen a case and permit additional testimony to be taken, and error can not be assigned on his refusal to do so, unless the circumstances indicate an abuse of that discretion. The court was clearly right in not permitting the first report of the auditor to be reheard in respect of matters that had been determined on the first appeal to this court. That appeal was prosecuted by the defendants and they are now concluded as to matters therein determined.

The letter was admitted in evidence on the hearing of the additional claims. To the argument founded on its weight as regards the Caldwell, Edge, and Smith claims, it is a sufficient reply that those claims were admitted by Moyers to have been among those turned over to him by Edmonds under their agreement.

6. The tenth assignment is to the effect, that "it was error, assuming the complainant to be en-

titled to take anything in this suit, to hold that the money paid to W. A. Montgomery for services as local counsel should not be deducted from the total fee in the claim of the executors of Kidd, before any division of said fee between complainant and the estate of Moyers."

The Kidd claim was one of those prosecuted under the terms of the special partnership, and at that time Montgomery had a contract for 10 per cent of the fee for his services in taking depositions in support of it. In November, 1900, as shown by the testimony of Miss Ida M. Moyers, who was then in her father's office, she sent a contract to be executed by the heirs of Kidd, giving Gilbert Moyers 50 per cent of the claim as a fee. This was done, as explained by her, because she had found no other fee contract. This contract was executed and returned, but before execution it was interlined so as to give 15 per cent of the recovery to said Montgomery. The entire fee collected in this case was \$6,730 of which Montgomery received 30 per cent. The auditor reported that the amount received by Montgomery in excess of the 10 per cent under his original contract, was chargeable to Moyers. We see no reason to doubt that the court was right in overruling the exception to the report. If Moyers saw proper to make the additional allowance to Montgomery instead of holding him to his original contract, he had no right to pay any part of it out of the share coming to Edmonds. There was no new employment and contract in this case as in that of Caldwell, before considered. The claim was prosecuted in the name of the executors of Kidd, and the parties signing the contract, as heirs of Kidd, had no right to control the case. Whatever interest they had as next of kin of the deceased claimant, was subordinate to the right of her executors. The executors had acquiesced in the management of the case by Moyers, and their liability was under the original contract with Edmonds with whom Moyers was associated.

7. The eleventh assignment claims error in the report in not crediting Moyers in the statement of the account with 25 per cent of the collection on the claim of Isaiah Beans. The fee collected in this case was \$640, of which Thomas received \$320. The auditor charged the whole of this fee to Moyers giving no credit for the amount paid Thomas. The court sustained the defendant's exception to this and it was referred back for ascertainment of the proper amount payable to Thomas out of the fee aforesaid. The auditor reported that \$100 was a reasonable compensation to Thomas for the services performed by him, one-half of which was chargeable to the account of Edmonds. We are not convinced that there was error in this conclusion.

8. The twelfth assignment relates to three claims of Ernest Neill, administrator of Joseph Egner, of William Goddard, and of Joel C. Johnson, administrator of Richard W. Johnson.

(1) We see no reason to doubt the conclusion of the auditor that the Egner and Goddard claims were among those included in the partnership agreement between Edmonds and Moyers, and hence that the fees were divisible in accordance therewith. As this is the only exception to the report as to their claims, there was no error in overruling the same.

(2) The Johnson claim was one of those reported in the auditor's statement of account herein

filed August 22, 1902, but it is there stated as claim of R. M. Johnson, administrator of Samuel Heard. The fee collected was found to be \$1,052.50, half of which was allowed to complainant in the statement of the account. The court sustained an exception to this item and the same was referred back to the auditor to report on the claim as that of Joel C. Johnson, administrator of the estate of Richard W. Johnson. In his report filed May 1, 1900, the auditor stated this claim as above named, to be one of the partnership cases, and found the fee collected was \$492, one-half of which was allowed to complainant. It appears that in the first report the case of Johnson administrator of Heard was confounded with the case of Johnson administrator of Johnson. There is no such mistake in the later report. This case is contained in the Edmonds list, and it appears that he had a contract for the fee therein, dated March 18, 1886, and authorizing him to prosecute the claim; also that he prepared and presented the petition to Congress for reference. The records show that Gilbert Moyers entered his appearance in the case in the Court of Claims June 25, 1890. Moyers, who testified concerning this claim on May 18, 1900, was not certain whether it was one of those received through the Edmonds contract. He said he thought it was not; but he failed to produce any contract of his own with the party, or any documents to show an independent connection with the case. We think the proof was sufficient to support the auditor's finding that it was a partnership case.

9. The thirteenth assignment of error calls attention to an error in the statement of the account in the report of May 1, 1906. While this error was not discovered, and no action in respect thereto was asked of the court on the exceptions to the report, the point has been waived by the appellee, who consents to the correction now. It appears, as before stated, that in the statement of the account in the report of August 20, 1902, the auditor charged the defendant with \$526.25, the same being one-half of a fee collected by defendant in the case of Johnson, administrator of Heard. To this an exception was sustained. In restating the account in the report of May 1, 1906, the auditor, by mistake, failed to deduct this sum from the balance before reported as due by defendant. The effect of this mistake is, that the said sum of \$526.25 has been adjudged payable by defendant, in addition to the sum of \$246 since charged to him on account of the fee collected in the case of Johnson, administrator of R. W. Johnson. It follows that the decree must be corrected so as to eliminate the said charge of \$526.25, and interest thereon.

10. The fourteenth assignment relates to the fees allowed the receivers for their services in the matter of certain collections. The auditor's report on the account of the receivers is not in the record, and there is nothing by which we can determine the nature and value of the services for which the allowance was made. It is unnecessary to consider the statement of appellee that the exception to this item was abandoned in the court below before the entry of an order on certain exceptions that were then presented and considered.

11. The fifteenth assignment is to the effect that it was error to allow complainant interest on fees due him until after the entry of a final decree ascertaining the balance due him on settlement of

the account. Interest was allowed on the items of the account stated August 20, 1902, and the same has been done in the case of all subsequent items. No exception was taken to the first report on this ground, and the only question raised as to interest was the failure to allow interest to Moyers on advances made by him to Edmonds. When the case was before us on the appeal from the confirmation of that report, it was said in the opinion: "The appellants offer no objection to this award of interest, but complain that a similar award was not made respecting the sum of \$1,470 found to have been advanced by Moyers to Edmonds in 1892." *Consaul v. Cummings*, 24 App. D. C., p. 49. The decree was then reversed and the interest claimed on the said advance was ordered to be allowed in the restatement of the account. No exception to the subsequent reports on account of the allowance of interest was made in the court below, and the question can not now be entertained.

12. An exception was taken to the report of the auditor filed January 4, 1904, to the allowance of a fee of \$231 as collected in the claim of John W. Fletcher. This was not embraced in the assignment of errors as presented in the printed argument of appellants, but was incidentally presented in the oral argument. It has been argued in additional briefs presented by both parties. That this was a partnership claim seems settled by its inclusion in the list of such claims filed by Moyers before his death. It is also contended that the entire amount of collection on this claim was \$231, the whole of which, instead of the half thereof, \$115.50, has been charged to Moyers as having been received as a fee. That this mistake was made is conceded by the appellee. But it is contended by the appellee that this is charged to the receivers in their account; and may be corrected when they file their final report. We are not advised by the record of facts sufficient to enable us to determine this point. It appears, therefore, that the defendants have been charged as collecting a fee of \$231 in the Fletcher case when in fact they collected but \$115.50. Their exception to the report to that extent should have been sustained. This will not prevent the correction of the receivers' account on final settlement if the facts justify the same for their protection.

13. On the appeal, No. 1779, prosecuted by Cummings from the decree overruling certain exception by him to the report of the auditor, several errors have been assigned.

These relate to the allowance of credit to Moyers for expenses in the Edmonds cases, and for fees that have been paid to special counsel in several of said cases.

We think it unnecessary to discuss these in detail. Some of them have been mentioned in considering the exceptions of the adverse parties that have been disposed of. We find no sufficient ground for disturbing the report in these several particulars.

So much of the decree as has been appealed from by Cummings in case No. 1779 will be affirmed, with costs.

14. The decree appealed from by Consaul and Moyers, appellants in No. 1778, will be affirmed in all respects save as regards (1) the error found in the equal division of the fee collected by Consaul and Moyers in the case of Lucy A. Caldwell; (2) the one charged in the case of John W. Fletcher, and (3) the mistake of the auditor in not

eliminating from the last statement of the account the item of \$526.25 improperly charged on account of fee collected in the case of Johnson, administrator of Heard. As to these three items it will be reversed, and the case will be remanded with direction to restate the account to the date of the decree, correcting the error aforesaid and ascertaining the proper proportion of the fee collected by Consaul and Moyers in the Caldwell case, to be allowed to Gilbert Moyers and divided with Edmonds, as well as correcting the charge made of the fee in the case of John W. Fletcher. It is expedient to make the final account embrace all of the collected claims in litigation and conclude the settlement.

The costs incurred on appeal in No. 1778 will be taxed one-half to each party respectively.

Modified and affirmed.

**Negligence—Care as to Licensee.**—Defendant held not liable for injuries resulting to a licensee on its premises received while exercising due care, unless its conduct was such as indicated a reckless and wanton disregard of the safety of the licensee. *Habina v. Twin City General Electric Co.* (Mich.), 113 N. W. Rep., 586.

**Negligence—Concurrent Causes.**—A defendant is liable for an injury caused to one using due care for his personal safety by the defendant's negligence concurring with an accident without which the injury would not have occurred. *Illinois Cent. R. Co. v. Siler* (Ill.), 82 N. E. Rep., 362.

**Negligence—Proximate Cause.**—Negligence of one carelessly placing herself in a position exposed to danger can not as a matter of law be said to be the proximate cause of injury, where reasonable care by the other party would have avoided the same. *Chunn v. City & Suburban Ry.* of Washington, U. S. S. C., 28 Sup. Ct. Rep., 63.

**Negligence.—Unprotected Turntable.**—Where a railroad company erects on its own land a turntable, it is under no duty to take special precautions for the safety of children, though the turntable may tend to attract them and expose them to danger. *Thompson v. Baltimore & O. R. Co.* (Pa.), 67 Atl. Rep., 768.

**Chattel Mortgages—Mortgagee as Bona Fide Purchaser.**—A mortgage for part of the purchase price of certain hotel furnishings given by an agent who owned only a half interest therein held a valid lien on the entire interest as against an undisclosed principle, who owned a half interest. *Ryan v. Crosthwaite* (Iowa), 113 N.W. Rep., 321.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.****Lester & Price, Attorneys****In the Supreme Court of the District of Columbia.****Andrew W. Kirk et al., Complainants, v. Alice C. DeVaughn et al., Defendants, and Frank DeVaughn Phillips et al., Cross-Complainants, v. Andrew W. Kirk et al., Cross-Defendants. Equity, No. 27,428.**

The objects of the cross-bill filed herein are: (1) to judicially establish and perfect of record the legal title in fee simple of the cross-complainant, Frank DeVaughn Phillips (defendant in original bill filed herein), in and to all of lots numbered one and two in square numbered four hundred and eighty-three, in the city of Washington, District of Columbia, and in and to those parts of lots numbered twenty and twenty-two in square numbered three hundred and seventy-eight in said city within the following metes and bounds, namely: beginning at the northeast corner of lot numbered 22 and running thence south along the west side of Ninth street 25.64 feet; thence west 110 feet; thence north 25.64 feet; thence east to the place of beginning; (2) to judicially establish and perfect of record the legal title in fee simple of cross-complainant Ernest S. Bartlett (defendant in said original bill) in and to that part of lot numbered twenty-one in said square numbered three hundred and seventy-eight, within the following metes and bounds, namely: beginning at the northeast corner of said lot and running thence south along the west line of Ninth street 19 feet 6 inches; thence west 63 feet 4.5 inches; thence north 19 feet 6 inches, and thence east to the place of beginning; (3) to perpetuate the testimony to be taken on behalf of said cross-complainants hereto; and (4) to perpetually enjoin the defendants in said cross-bill named, and all persons claiming by, through or under them, or any of them, from ever asserting by suit or otherwise, any claim, right or title to said real estate or any part or parcel thereof. On motion of said cross-complainants, it is this 8th day of April, A. D. 1908, ordered that the defendants, Iola P. Spaulding and Alice C. DeVaughn, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, allies and devisees of William F. DeVaughn, Jr., the unknown heirs, allies and devisees of Jane Davis, the unknown heirs, allies and devisees of Addison DeVaughn, and the unknown heirs and the unknown allies and devisees of any such heirs, if any there be, of Samuel DeVaughn, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three weeks after the day of the first publication of this order (good cause for fixing such time for such appearances having been shown to the satisfaction of the court); otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks, and twice a month during the said period of three weeks herein above prescribed, in The Washington Law Reporter and The Washington Herald. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-31

**M. J. Keane, Solicitor****In the Supreme Court of the District of Columbia.****Joanna Chisholm v. Agnes O. Moore et al. No. 27,678. Equity Docket, No. 61.**

The object of this suit is to sell for partition the following described property of which the late John O'Connor died seized and possessed, to wit: The west twenty (20) feet front by full depth of original lot nine (9), in square seven hundred and seventy-seven (777), and described as follows: Beginning at northwest corner of said lot, thence south one hundred and twenty (120) feet; thence east twenty (20) feet; thence north one hundred and twenty (120) feet to H street, and thence west twenty (20) feet to beginning, located in the city of Washington, District of Columbia. On motion of the plaintiff, it is, this 9th day of April, A. D. 1908, ordered that the defendant, Martin O'Connor, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-31

**Legal Notices.****C. E. Emig, Solicitor****In the Supreme Court of the District of Columbia. Harriet S. Smith v. Charles A. Baker, Trustee, et al. Equity, No. 27,897.**

The object of this suit is to vest title in the complainant in and to lot 31, block 3, of the subdivision of White Haven and Harlem, as per plat recorded in the surveyor's office of said District in county book 8, at folio 124, and on motion of complainant, it is, this 8th day of April, 1908, ordered that the defendants, Ida M. Smith, Arthur G. Smith, Frederick M. Smith, Helen Smith, Stella Smith, Harry Smith, Burton Smith, and Ralph Smith, if they be living, and the unknown heirs, devisees, and allies of such of them as are dead, cause their appearance to be made herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided the copy of this order be published once a week for four successive weeks prior to such return in The Washington Law Reporter and [Seal] In The Washington Evening Star. **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-31

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia, Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Beattie Lanston, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1908. **AMERICAN SECURITY AND TRUST COMPANY, William A. McKenney, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,148. Administration. [Seal.] 15-31**

**Henry H. Glassie, Attorney****In the Supreme Court of the District of Columbia, Holding Probate Court.****Estate of Louise A. B. Hughes, Deceased. No. 14,732. Administration Docket —**

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 3d day of March, 1902, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Clara C. Mitchell, Marian G. Wilson, Anna C. Grief, Sumpter Calvert, Charles H. Hiern, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma T. Brown, Kittie White, Pattie Weeks, and unknown heirs at law and next of kin of Louise A. B. Hughes, "not to be found," it is, this 9th day of April, 1908, ordered that the issues be set down for trial on the 11th day of May, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues whether said paper writing was procured by fraud or undue influence and whether testatrix was of unsound mind [Seal] on March 3, 1902. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-31

**Beall & Marine, Attorneys****In the Supreme Court of the District of Columbia, Holding a Probate Court.****In re Estate of Agnes Wilson Hedges, Deceased. No. 15,037.**

Application having been made by Walter S. Wilson for the probate of the last will and testament of Agnes Wilson Hedges, and that letters of administration cum testamento annexo upon her estate be granted, it is ordered, this the 9th day of April, 1908, that George S. Wilson, Allen Grant Wilson, William R. Wilson, and all others interested in said estate appear in said court at 10 o'clock A. M., Monday, the 18th day of May, to show cause, if any they can, why such application should not be granted. Let notice thereof be published in The Washington Law Reporter and Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication day to [Seal] be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 15-31

## Legal Notices.

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Beverly Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. **JOHN W. GLENNAN**, 523 9th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,951. Administration. [Seal.] 15-St

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. on the estate of Jesse N. Seale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3rd day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3rd day of April, 1908. **MARY E. BIRCHETT**, 4343 Lindell Biv., St. Louis, Mo. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,966. Administration. [Seal.] 15-St

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick H. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. **ROBERT L. MONTAGUE**, 617 La. ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,185. Administration. [Seal.] 15-St

**Wm. Stone Abert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary Abert Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. **WILLIAM STONE ABERT**, 408 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,182. Administration. [Seal.] 15-St

**David Rothschild, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph A. Kaschka, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. **CHAS. E. GERNER**, 229 7th street N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,024. Administration. [Seal.] 15-St

## Legal Notices.

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jennie H. Scott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1908. **ALBERT F. FOX**, No. 911 F st. N. W.; **JOSEPH J. DARLINGTON**, 410 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,961. Administration. [Seal.] 15-St

**Charles T. Hendler, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Preston B. Wright v. Sarah T. Wright and John M. McClintock, Defendants. Equity, No. 27,091.**

The object of this suit is to obtain an absolute divorce from the defendant, Sarah T. Wright, on the ground of adultery committed with the defendant, John M. McClintock. On motion of the complainant, it is, this 8th day of April, A. D. 1908, ordered that the defendants, Sarah T. Wright, John M. McClintock, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks prior to said day in

The Washington Law Reporter and The Evening Star. By the Court: **ASHLEY M. GOULD**, Associate Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Andrew Matsen, Deceased.**  
**No. 15,167. Administration Docket.**  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by E. S. Mussey, it is ordered this 9th day of April, A. D. 1908, that Tomene Matsen, of Porsgrund, Norway, and all others concerned, appear in said court on Tuesday, the 12th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal.] **ASHLEY M. GOULD**, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-St

**J. Dawson Williams and B. H. Warner, Jr., Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Mejia, Their Unknown Heirs, Allenees, and Devisees, if Any or All be Dead. In Equity, No. —.**

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, Jesse B. Rank, to sublots 24, and 66 to 88, both inclusive, and the east 6.25 feet of sublot 65 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant, George W. Montgomery, of sublots 35 to 41, both inclusive, and the east 6.25 feet of sublot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in

[Seal] The Washington Law Reporter and The Evening Star newspaper before said day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. April 10, 17; May 15, 22; June 12, 19

**Legal Notices.****Wilson & Barksdale, Attorneys**

In the Supreme Court of the District of Columbia.  
Emil G. Bruehl, Plaintiff, v. George J. Michelbacher,  
Defendant. At Law, No. 50,836.

The object of this suit is to recover seventy-two dollars and nine cents (\$72.09), with interest thereon from July 17, 1908, at the rate of 8 per cent per annum, and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 7th day of April, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 15-3t

[Seal]

Edwin C. Dutton, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Frederick Luck, Deceased.**

No. 15,145. Administration Docket.—

Application having been made herein for letters of administration on said estate, by Edwin C. Dutton, it is ordered this 3d day of April, A. D. 1908, that the unknown heirs at law and next of kin of the said Frederick Luck, deceased, and all others concerned, appear in said court on Monday, the 11th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

[Seal]

Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Emma G. Hoyt, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 27th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of April, 1908. JOHN PAUL EARNEST, 823 1/2 st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,421. Administration. [Seal.] 15-3t

**Marion T. Clinkscales, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Harriet C. Bender, Deceased.**

No. 15,134. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Louisa Lemkens, the executrix named in said last will, it is ordered this 23d day of March, A. D. 1908, that all the unknown heirs at law and next of kin, and all others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-3t

[Seal]

Justice blanks of every description for sale at this office.

Justice blanks of every description for sale at this office.

**Legal Notices.****Coldren & Fenning, Attorneys**

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frances H. Tolman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1908. JAMES P. TOLMAN, 409 4th st. N. E.; FRED G. COLDREN, Century Building, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,184. Administration. [Seal.] 15-3t

Newcomb, Churchill & Frey, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. l. a. on the estate of Jane Eliza Bradt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. JANE BRADT, 1823 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,096. Administration. [Seal.] 15-3t

Nelson Wilson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard H. Lansdale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1908. MARY S. LANSDALE, 1214 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,881. Administration. [Seal.] 15-3t

Hugh T. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Etta B. Stewart, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 4th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of April, 1908. LUCIA G. M. COSTIN, Admx., by Hugh T. Taggart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,272. Administration. [Seal.] 15-3t

J. H. Lichtler, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas M. Boland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. MARY A. BOLAND, 2223 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,188. Administration. [Seal.] 15-3t



**Legal Notices.****William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen A. Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1908. **AMERICAN SECURITY AND TRUST COMPANY, William A. McKenney, Atty.** Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,967. Administration. [Seal.] 15-31

**SECOND INSERTION.****Frank P. Leary, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edgar Ramsay Lowe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. **DAVID E. L. BRUNER**, 1325 Corcoran st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,170. Administration. [Seal.] 14-31

**McGowan, Serven & Mohun, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Francis S. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. **MARY H. DODGE**, 1821 Belmont Road. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,169. Administration. [Seal.] 14-31

**Wm. E. Ambrose, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Sophia S. Seale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1908. **MARY E. BIRCHETT**, 4348 Lindell Biv., St. Louis, Mo. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,160. Administration. [Seal.] 14-31

**B. W. Parker, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anne A. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1908. **ROBERT J. UMBSTAETTER**, 2130 Le Roy Place. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,163. Administration. [Seal.] 14-31

**Legal Notices.****Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. Walter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **NATIONAL SAVINGS AND TRUST CO.**, by **George Howard**, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration. [Seal.] 14-31

**Carter & Brooke, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Hans Hansen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **JESSE D. NEWTON**, I. C. Commission. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,771. Administration. [Seal.] 14-31

**John B. Lerner, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rufus Saxton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, by **Fred'k Eichelberger**, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,143. Administration. [Seal.] 14-31

**Birney & Woodard, Attorneys****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

**Joseph H. Stewart and George H. White, Complainants, v. Archibald Lewis, et al.** No. 27,274, Equity. The trustee in this cause having reported that he has sold lot 26 in Walter S. Cox's trustee's subdivision of original lot 21 in square 514 at the price of \$685.00, subject, however, to a deed of trust to secure \$3,500.00, it is this 30th day of March, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 24th day of April, 1908. Provided a copy of this order be published in The Washington Law Reporter and in The Washington Herald once a week for three weeks before said day. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wm. F. Lemon**, Asst. Clerk. 14-31

**Walter C. Clephane, Alan O. Clephane, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah Catharine Tise, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 28th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of March, 1908. **GEORGE TISE**, Hyattsville, Md.; **CHAS. L. DEMAVEST WASHBURN**, 1746 Corcoran st., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration. [Seal.] 14-31



**Legal Notices.**

**Wm. D. Hoover, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Lizzie Dewey, Deceased.  
Admn. No. 14,948. Docket.

The National Savings and Trust Company having reported to the court that it has received an offer from Jessie Oelrich to purchase lot numbered fifty-eight (58) in William H. Clagett's subdivision of block numbered thirty (30), "Long Meadows," in the District of Columbia, described in its report duly filed in these proceedings, at and for the price of fourteen hundred dollars (\$1,400), upon the terms of two hundred dollars (\$200) cash and twelve hundred dollars (\$1,200), to be secured by deed of trust, and to bear interest at the rate of six per cent (6%) per annum; it is, by the court, this 2d day of April, A. D. 1908, ordered that said offer be accepted and said sale ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of May, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star, once a week for three successive weeks prior to said last mentioned date. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 14-St

**J. Clarence Price, Attorney**  
In the Supreme Court of the District of Columbia.  
In re the Assignment of Charles R. Talbert.  
Equity No. 27,357.  
J. Clarence Price, assignee, having reported the sale of the west forty feet seven inches on Maryland avenue by the full depth of lot numbered two in square numbered ten hundred and twenty-seven, in the city of Washington, District of Columbia, to Charles R. Talbert, for \$2,725, out of which is to be paid the sum of fourteen hundred ninety-one dollars and eighty-eight cents and accumulated interest thereon (the amount of the first trust on said property), it is this 31st day of March, A. D. 1908, ordered by the court that said sale be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of May, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named date in The Washington Law Reporter. [Seal.] **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-St

**THIRD INSERTION.**

**Basil D. Boteler, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a., on the estate of Mary A. E. Stockton, otherwise known as Marian E. Stockton, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 25th day of March, 1908. **SALLIE EVANS BOOKER**, by Basil D. Boteler, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,121. Administration. [Seal.] 13-St

**Lester & Price, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Ferdinand Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of March, 1908. **MARGARET MILLER**, 2230 Brightwood ave. N. W.; **JOHN SHUGHRUE**, 818 M st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,128. Administration. [Seal.] 13-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Walter C. Balderston, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Marianna M. Van Why, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **EMMA E. NORRIS**, 1004 Mass. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,086. Administration. [Seal.] 13-St

**Darr, Peyser & Curtin, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louis Schmidt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **AMELIA BARBARA SCHMIDT**, 702 7th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,181. Administration. [Seal.] 13-St

**John B. Lerner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frank Courtis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of March, 1908. **MAUDE C. COURTIS**, The Cairo, Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,046. Admn. [Seal.] 13-St

**Brandenburg & Brandenburg, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jacob Veihmeyer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. **JACOB O. VEIHMAYER**, 438 10th st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,098. Administration. [Seal.] 13-St

**Howard Boyd, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Herman H. Goetz, Deceased.  
Administration No. 15,048.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jennie Goetz, it is ordered this 25th day of March, A. D. 1908, that Marie Goetz, Sallina Goetz, Albert Goetz, and Carroll Goetz, and others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal.] not less than thirty days before said return day. Attest: **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 13-St

**Legal Notices.**

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Theodore J. Mayer, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 21st day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 23d day of March, 1908. **AMERICAN SECURITY AND TRUST CO.**, by **William A. McKenney, Attorney.** Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,347. Administration. [Seal.] 18-31

**P. R. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Patrick Reddington, Deceased.**  
 No. 15,087. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with the will annexed on said estate, by Bridget Durken, it is ordered this 24th day of March, A. D. 1908, that Margaret McGowan, of Cross Molina, Mayo County, Ireland, and John Reddington, of Killala, Mayo County, Ireland, and all others concerned, appear in said court on Tuesday, the 28th day of April, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 12-32

**Hugh T. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Bridget M. Wardell, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of April, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of March, 1908. **PETER J. MCINTYRE**, by **Hugh T. Taggart, Attorney.** Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 18,586. Administration. [Seal.] 18-31

**W. C. Balderston and Barnard & Johnson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Robert H. Kaiser Complainant v. Julius A. Kaiser et al., Defendants.** No. 27,202. In Equity.

Upon consideration of the report of **Walter C. Balderston** and **Edgar B. Sherrill**, trustees, that they have sold the lots numbered 15 and 16 in **Shepherd's** subdivision of square west of square 623, improved by premises Nos. 821 and 823, N. J. Ave. N. W., to **Philip Schwartz**, for the price of sixty-five hundred dollars (\$6500.00), payable all cash. It is, this 24th day of March, A. D. 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 24th day of April, 1908. Provided a copy of this order be published once a week for three (3) weeks before said date

[Seal] in The Washington Law Reporter and The Evening Star. **ASHLEY M. GOULD, Justice.** A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon, Asst. Clerk.** 18-31

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 618 Fifth Street, N. W.

**Legal Notices.**

**Henry W. Bohon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Denis J. Stafford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of March, 1908. **HELEN C. WHITTON**, 918 M St. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,004. Administration. [Seal.] 18-31

**Glenn E. Husted, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of David R. Whitcomb, Deceased.**  
 No. 15,112. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Harriet N. Whitcomb**, his widow, it is ordered this 24th day of March, A. D. 1908, that **Curtis Erwin Whitcomb**, **Clarence Eugene Whitcomb**, **Charlotte Elizabeth McConnell**, **Carrie May Bennett**, **Walter Allen Whitcomb**, **Myron Whitcomb**, **Olive May Cleveland**, **Ruth Ann Robinson**, **Hattie M. Park**, **Elma Green**, and all others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-31

[Seal] fore said return day. **ASHLEY M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-31

**Wm. H. and Chas. Linkins, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James H. Byram**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of March, 1908. **GEO. W. LINKINS**, 800 19th St. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,136. Administration. [Seal.] 18-31

**FOURTH INSERTION.**

**Geo. Francis Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Lulu Tippin, Plaintiff, v. Alice C. Burr et al., Defendants.**

No. 27,612. Equity Docket No. 61.

The object of this suit is to obtain a decree for the partition in kind or by means of a sale of certain real estate in the District of Columbia, of which **Richard S. Cain** died seized, namely: Part of lot 19 in **Rothwell and Naylor's** subdivision of square 425, known as premises 1159 Eighth street, N. W., in the city of Washington; part lot 23, all of lot 29 and part lot 30 in **King's** subdivision of "Long Meadows," known as premises 1242, 1244 and 1246 **Bladensburg** road, and lot 34 and part lot 35, in said **King's** subdivision, reference being made to the bill of complaint for a more complete description of all of said real estate. On motion of the plaintiff it is, this 19th day of March, A. D. 1908, ordered that the defendants, **Alice C. Burr**, **Lillie Dagen** and **Sallie Palmer**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star of Washington before said day. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon, Asst. Clerk.** 12-41

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - APRIL 17, 1908

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### Bond of Public Contractor—Subrogation of Surety.

The recent decision of the Supreme Court of the United States, in the case of Henningsen v. United States Fidelity and Guaranty Company, is of especial interest to sureties on the bonds of contractors with the Government. The act of Congress of August 13, 1894 (28 Stat. at L., 278), requires such bonds to be conditioned for the faithful performance of the contract and the prompt and full payment of laborers and materialmen. The Supreme Court holds in the case referred to that the surety on such a bond has an equity, under the doctrine of subrogation, in the sums due from the Government under the contract which is superior to the claim of a bank under an assignment from the contractor to secure the repayment of money loaned him by the bank, to be used as he saw fit, either in the performance of his building contract or in any other way. The court expresses its agreement, with the views announced by the United States Circuit Court of Appeals, in its opinion in the same case, as follows:

"Whatever equity, if any, the bank had to the fund in question, arose solely by reason of the loans it made to Henningsen Henningsen's surety was, upon elementary principles, entitled to assert the equitable doctrine of subrogation, but it is equally clear that the bank was not, for it was a mere volunteer, and under no legal obligation to loan its money. *Prairie State Nat. Bank v. United*

*States*, 164 U. S., 227; *Etna L. Ins. Co. v. Middleport*, 124 U. S., 534, 31 L. Ed., 537, 8 Sup. Ct. Rep., 625; *Sheldon, Subrogation*, sec. 240." See, also, *United States Fidelity & G. Co. v. United States*, 204 U. S., 349, 356, 357, 51 L. Ed., 516, 519, 520, 27 Sup. Ct. Rep., 381.

### Bankruptcy — Brokerage Firm — Rights of Party Pledging Securities.

The case of *Thomas v. Taggart*, recently decided by the Supreme Court of the United States, arose out of the following state of facts: The appellee Taggart was a patron of the brokerage firm of one Berry, in New York, which went into bankruptcy, and the appellant was appointed as trustee. In November, 1904, when the firm failed, the appellee had on deposit with it eighty-three shares of stock in a well-known corporation, and it was to recover this stock that the action was brought. The trustee resisted the action on the ground that the appellee's relation to the firm was the same as that of any other creditor. The Federal courts in New York, however, held that the stock was held only as a pledge, and that, therefore, the appellee was entitled to claim its return, and in this view the Supreme Court of the United States concurred.

In the case of *Richardson, trustee, v. Shaw*, also decided recently by the Supreme Court of the United States, it was held that securities held by a broker who is about to become bankrupt may be returned to their original owner without the transaction constituting a preference under the law. It appeared in this case that one Brown, for whom the appellant was trustee, was declared a bankrupt on June 26, 1903. On the day before, Brown turned over to the appellees, who had been customers of his firm, \$45,583 in securities which they had deposited with him in the course of their business with him, and at the same time they paid to Brown an indebtedness of \$34,919. After the appointment of the appellant as trustee in bankruptcy, he began suit against the appellees to secure the restoration of the securities on the ground that the returning them to the original owners constituted an act of undue preference among creditors. The lower courts decided against this view of the law, and their ruling is affirmed by the Supreme Court of the United States.

### Title Abstracter's Liability for Errors.

In *Equitable Building and Loan Association v. Bank of Commerce*, decided by the Supreme Court of Tennessee, it is held that an abstractor of titles is liable for errors only to the person to whom he furnished the abstract, and is not answerable to one to whom the abstract was presented by the property owner and who loaned money in reliance thereon without any notice to the abstractor of the intended use of the instrument.

## Court of Appeals of the District of Columbia.

COLUMBIA HEIGHTS REALTY CO.

v.

HENRY B. F. MACFARLAND ET AL.

CONDEMNATION PROCEEDINGS; ESTOPPEL; JURY;  
STATUTE OF LIMITATIONS; INSTRUCTIONS.

1. In proceedings under the act of March 3, 1899, for the extension of Eleventh street, a motion was made by appellant to dismiss the proceeding on the ground that this act had been repealed by the act of June 6, 1900. The court, without objection on the part of appellant, passed an order directing the proceeding to be continued under the act of June 6, 1900. The proceeding was so continued, appellant participating in the litigation, and a verdict was returned making an assessment for benefits against appellant's property. Held, that appellant, having made its election, was estopped to object to the verdict of jury on the ground that the court erred in directing the proceeding to be continued under the act of 1900, instead of under the act of 1899.
2. An application, made subsequently to the time a condemnation jury was empanelled and sworn, for leave to examine its members as to their qualifications, is properly denied, where the party had notice of the time the jury would be empanelled and an opportunity then for such an examination.
3. Objections to a condemnation jury because of irregularities in its selection and summons must be raised before the jury is empanelled and sworn.
4. Whether in condemnation proceedings the Statute of Limitations has any application unless imposed by the act under which the proceeding is had, quære; but the plea of the Statute of Limitations in the present case held properly denied effect.
5. Appellant, having acquired title pending the proceedings, takes subject thereto and is bound thereby.
6. The refusal of instructions is not error where all that was proper contained therein was covered by other instructions given the jury.
7. It is within the power of Congress, after having directed the extension of a street and that one-half the expense be assessed against property in a defined district, subsequently to extend the area of assessment so as to include all lands actually benefited.
8. The bill of exceptions in the present case held not to authorize an inquiry as to the competency of the evidence produced before the jury of assessment or as to its sufficiency and weight.

No. 1333. Decided March 31, 1903.

APPEAL from a judgment of the Supreme Court of the District of Columbia, holding a District Court, No. 556, in a proceeding to condemn land for the extension of Eleventh street. Affirmed.

Mr. LEO SIMMONS for the appellant.

Mr. E. H. THOMAS and Mr. J. F. SMITH for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is a proceeding for the condemnation of land for the extension of Eleventh street, N. W., in the city of Washington, from Florida avenue northward to Lydecker avenue, begun by a petition filed by the Commissioners of the District, in the Supreme Court of the District, on May 31, 1899.

The proceeding was commenced under the authority of an act of Congress, approved March 3, 1899.

A jury of seven men was summoned, and after hearing returned a verdict on February 20, 1900, assessing damages for the lands taken and damaged, as well as benefits, to the extent of one-half of the total damage, against certain lots within the boundaries created by the act, on account of the opening of the street. Exceptions were filed to this verdict by John Sherman and A. M. Hoyt, so far as

it assessed benefits against their property. As is shown by other appeals, other owners also excepted. July 3, 1900, one of the justices of the Supreme Court of the District confirmed the report or verdict as to damages for the lands taken, and set it aside as to the benefits assessed. The order declaring the assessment for benefits void was in pursuance of a decision of this court in another condemnation case of Davidson v. Wight, 16 App. D. C., 371: 28 Wash. Law Rep., 302. The Commissioners appealed from the decision so far as it vacated the assessment of benefits in a case entitled MacFarland v. Byrnes et al. While the case was depending an appeal to the Supreme Court of the United States reversed the decision in Davidson v. Wight, see 181 U. S., 371. In accordance with this last decision as regards the legality of the assessment of benefits, the order vacating the verdict as to benefits was reversed, July 22, 1903, and the cause remanded for further proceedings. MacFarland v. Byrnes, 19 App. D. C., 531: 30 Wash. Law Rep., 237.

On March 4, 1904, upon consideration of the mandate of this court, and a motion of the Commissioners to confirm the said verdict, the court overruled the motion and entered an order vacating the assessments, and directing that the Commissioners might apply within a reasonable time for a jury of twelve to make another assessment. This followed the rule laid down by this court in construing the provisions of the act of March 3, 1899, as the proper one where exceptions had been made and not withdrawn. See Brown v. MacFarland, 19 App. D. C., 525: 30 Wash. Law Rep., 235.

On June 17, 1904, a motion was filed by the attorney representing the appellants in this case, and other owners, and by Samuel Maddox representing some other land owners, to dismiss the suit "as to any further proceedings in this cause, because the law under which such proceedings must be had has been repealed;" and, second, for the failure of the Commissioners to proceed as required by the order of March 4, 1904. The act referred to as repealing the Act of March 3, 1899, is that of June 6, 1900 (31 Stat., 665, sec. 12). That was an act for the extension of Columbia road and for other purposes. Section 12 of that act made its sections 3, 4, 5, 6, 7, 8, and 11 applicable to the former act for the extension of Eleventh street. These sections provided a somewhat different procedure from that of the former act. Section 6 provided that in case the verdict or award shall be vacated a new jury shall be summoned, which jury is named in section 4 as consisting of seven men. Section 8 corrected the omission of the former act to provide time for payment of the installments of benefits assessed, and permitted amendments of petition, process, records, proceedings, and descriptions of property. Section 12, in addition to making other sections applicable as aforesaid, authorized the District Commissioners to apply for the final ratification of the awards made for extension of Eleventh street, and concluded thus: "And in the event that the assessments for benefits levied by the jury in relation to said Eleventh street shall for any reason be declared void, the said Commissioners of the District of Columbia are authorized and directed to make application to said court for a reassessment of such benefits under and in accordance with the provisions of this act." On the same day that the motion above recited was filed, June 17, 1904, it was ordered by the court: "Upon

consideration of the proceedings herein and the motion filed by Abner Greenleaf and others," on that day, that the petitioners in the above entitled cause, within sixty days from the date hereof proceed in the matter of the reassessment of benefits herein in accordance with the terms and provisions of the act of Congress approved June 6, 1900.

On August 9, 1904, the Commissioners filed an amended and supplemental petition in which they stated briefly the previous proceedings in the case, including the order aforesaid, and prayed for notice to be given, and the appointment of a new jury of seven to reassess the said benefits. After publication of notice the new jury was impanelled which thereafter proceeded to view the property and hear evidence. Their verdict or award was filed June 6, 1906. The appellants filed exceptions to the award and moved to vacate it upon several grounds which will appear later.

On February 5, 1907, Leo Simmons, as attorney for the objectors and present appellants, filed an affidavit, relating to the motion heretofore recited that had been signed by him and other counsel, and on which the order to proceed under the act of June 6, 1900, was founded, in which he stated that he had served a copy of said motion upon opposing counsel, but did not file the original, intending to file it at the hearing; that opposing counsel came into court on the day as notified, and had with him an order prepared, expressing his willingness to proceed in accordance therewith; that he, Simmons, objected to the said order being signed; that no hearing was had, and the question whether or not proceedings should be had under the act of 1900 was not argued; that the justice suggested that any objection he might wish to make could be taken advantage of in the future; that affiant asked that notice be given of the amended petition, which was promised, and nothing more was said. The justice signing the order did not hear the case on the final proceedings. He gave a certificate, which was filed with the affidavit, to the effect that his recollection was that when he signed the order there was no discussion as to the act under which procedure should be pursued; and that he had no remembrance of Mr. Simmons consenting to the order.

It appears from the bill of exceptions that in February, 1906, the appellants moved to strike out the amended and supplemental petition filed August 9, 1904, because filed without authority of law, because not in accordance with the former order, and because if the proceeding is to be prosecuted under the act of June 6, 1900, it must be a new one. The motion was overruled and exception noted.

This motion was renewed and again denied March 6, 1906. The appellants then filed a plea to said petition of the bar of the Statute of Limitations, because the right asserted therein did not accrue within three years next before filing the same. Another plea alleged that the former adjudication had settled the right to the assessment of benefits adversely to the claim of the petitioners. It further appears that notice to the seven jurors, signed by the marshal, had been served by his deputies upon each of them. Next appears an order of the court impanelling the jurors as summoned, and directing them to proceed with the assessment under the provisions of the act of June 6, 1900, as had been before determined. Notice was given to the counsel for appellants,

which contained the names of the jurors selected of the date set for impanelling the jury, but he failed to appear before the same was done. Whether counsel for other interested parties were present does not appear. The jurors appeared and without being examined as to their qualifications were regularly sworn. After the jury had been impanelled and sworn, counsel for appellants undertook to examine them as to their qualifications, and excepted to the denial of his right. At the request of the petitioners the court gave the following instruction to the jury:

"It is the duty of the jury to consider and assess the benefits which have resulted to the pieces or parcels of land on each side of Eleventh street, northwest, as extended from Florida avenue to Lydecker avenue, and the benefits which have resulted to any and all other pieces or parcels of land from the extension; and in determining amounts to be so assessed against said pieces or parcels of land the jury shall take into consideration the respective situations of the said pieces or parcels of land, and the benefits that they have severally received from said extension of Eleventh street. By extension of the street the jury are to understand its establishment, laying out, and completion for all the ordinary uses of a public thoroughfare or highway."

Appellants excepted to this instruction on the ground that the extension could not mean the completion of the street for all ordinary purposes of a public highway; that the jury had no right to assess benefits beyond the line of 200 feet from the street to be opened.

The court then proceeded to further instruct the jury as follows:

"1. The jury are instructed that in ascertaining whether any benefit has accrued to any piece or parcel of land abutting upon or within the vicinity of Eleventh street extended, they shall not take into consideration any benefit that they find which has accrued to the land in question subsequent to the extension of said street. Therefore, in order to levy an assessment for benefits against any piece or parcel of land abutting upon said street or adjacent thereto, the jury must find that the benefits upon which such assessment is based was brought about by the extension of said street, and not by any improvement made since it was extended, or by extension of car line in said street.

"2. The jury is further instructed that they are not bound to levy any assessment whatever for benefits in this case, unless they find the property so assessed actually benefited by enhancement in value and that such benefit accrued immediately from the extension of the street in question.

"3. And in establishing such benefits, in case they shall find any, they shall take into consideration the damage done to any piece or parcel of land abutting said street or adjacent thereto by reason of leaving the same above the established grade thereof; that is to say, if they should find any piece or parcel of land benefited by laying out and opening of said street, and shall also find that by reason of the grade of said street being fixed at a point much below the level of such ground, and that such ground by reason thereof is left far above the said street grade, so as to cause damage on account of grading same, they shall take such grading into consideration, and if they find that the damage so sustained exceeds the benefits accruing, as formerly instructed, they shall not assess

such piece or parcel of land at all; and in considering the benefits, and the damages caused by change of grade in extension of said street, the jury should take into the amount allowed, if any, for damages, by reason of such change of grade, by the former jury which assessed damages.

"4. The jury are instructed that they are not at liberty to levy any assessment against any piece or parcel of land abutting upon or adjacent to said Eleventh street, unless they find such piece or parcel of land benefited by actual enhancement in value immediately upon the opening and extension of said street, and in considering whether or not any piece or parcel of land has enhanced in value, they have no right to consider any increase or enhancement in value that is the result of any special improvement made upon the street after it was opened and established, as previously stated, neither have they the right to take into consideration any special improvement made upon any street crossing said Eleventh street."

The appellant offered the following prayers for instructions, which were refused:

"1. The jury are instructed that in ascertaining whether or not any benefit has accrued to any piece of land abutting upon Eleventh street extended, or in the vicinity thereof, they shall not take into consideration any benefit which they may find had accrued to such land subsequent to the laying out and establishing of said street. That is to say, that in laying assessments for benefits, if the jury shall find any, they shall not take into consideration the grading or paving of the street, nor any improvements or street-car facilities thereon subsequent to the laying out of the street. In other words, the jury must find that the benefit upon which an assessment was based, was the direct result of laying out and establishing the street, and not the result of improvements since made, either in or upon the street itself, or abutting upon nearby lands.

"2. Such special improvements as water-mains, sewers, curbs, gutters, and sidewalks are usually assessed in other proceedings, and, of course, any enhancement in value arising from that character of improvement and the macadamizing of the street in question, or any street crossing the same should not be taken into consideration as a basis of benefit in this case.

"3. The said jury is further instructed that in estimating what benefits, if any, have accrued to any piece or parcel of land abutting upon or adjacent to said Eleventh street, they are not at liberty to take into consideration any enhancement in value or benefit that has been given or accrued to such land by the grading of such street nor macadamizing the roadway of same; nor have they the right to base their assessment for benefits upon any enhancement in value, if they find any, brought about by the laying of sidewalks, sewers, water-mains, gutters and curbs, that have been placed in or upon said street; their sole right to levy an assessment against any piece or parcel of land must be founded upon such benefits, if any, as have accrued to the land from the extension of the street only. And what is meant by extension is the condemnation of the land for public uses and locating said street by demarcations and boundaries and placing same upon the maps and plans of the District of Columbia as a public highway.

"4. The jury is instructed that what is meant by

'benefits,' is not such benefits as accrue to the public generally; but such benefits as will actually enhance the value of the property; and if from the evidence they find that any piece or parcel of land abutting upon said street or adjacent thereto has depreciated in value since the extension of said street, instead of enhancing it or increasing it in value, then they are not at liberty to levy any assessment against same.

"5. The jurymen are further instructed that the burden is upon the petitioners, the Commissioners of the District of Columbia, to satisfy you that any piece or parcel of land has in fact been benefited by enhancement in value from the extension of said street. That every presumption of law growing out of their proceedings should be resolved in favor of the person whose land is liable to assessment. And therefore if any doubt should be met with, caused by reason of delay in prosecuting these proceedings, as to whether or not any piece or parcel of land was in fact benefited by the extension of said street and at the time it was extended, such doubt should be resolved in favor of such property owner and against the District of Columbia."

Appellant then moved the court to discharge the jury, because the members thereof had not been selected and summoned as required by law. This was overruled. The bill of exceptions then proceeds to recite: "The following, purporting to be the substance of the evidence before the jury, which evidence was presented to the court in the form of an affidavit by the stenographer, after the verdict was returned and exceptions being heard." This is followed by a statement of evidence as disclosed by said affidavit, together with certain other affidavits relating to other proceedings in the case.

The concluding recital of the bill relating to this evidence, reads as follows:

"The foregoing substance of the testimony taken before the said jury was abstracted by the appellant from the testimony filed as an affidavit in the case by order of the court. After the counsel had argued the case upon the propositions of the law raised by the exceptions, counsel for the appellant, in support of its motions and exceptions, offered to read to the court the said testimony, but the court declined to hear the same or consider it at the time in full, counsel saying that it would be his purpose to consider the same if the court found, after consideration, the propositions of law were against the appellant. But counsel had no further opportunity to argue said case on the evidence, and without reading the evidence, or hearing it fully read, the court passed an order overruling all the exceptions, and confirming said verdict and refused to consider said testimony any further, and the appellant excepted."

The bill of exceptions also recites the objections of the appellant to the confirmation of the award or verdict. It is unnecessary to repeat these as such of them as are relied on will appear on the assignment of errors.

1. The first error assigned relates to the action of the court in ordering the proceeding to be continued under the provision of the act of June 6, 1900, instead of under the act of March 3, 1899.

The substantial difference between the two acts is that the former would require the new assessment to be made by a jury of twelve, while the latter limits the number to seven. The second, re-



sponding to a suggestion made by the court in *Todd v. MacFarland* (20 App. D. C., 176, 184: 30 Wash. Law Rep., 423), cures the defect in the former relating to the payment of the assessed benefits in certain installments. The latter contains no limit of the area of assessment while the former does.

We regard it as unnecessary to consider whether the later act was intended to supersede the former entirely as regards the reassessment of benefits under the proceeding pending when the same was approved. The appellant and others interested were apparently of the opinion that it did so, as is shown by their motion of June 17, 1904. The opposing parties accepting that view as correct, the court made the order on that day, and the proceedings were continued in accordance therewith, resulting in the verdict returned June 6, 1906, the confirmation of which is the subject of the appeal. No objection was raised to the new order of procedure until a late hour in the proceedings. The objection appears for the first time in the affidavit of Leo Simmons, filed February 7, 1907, which is recited in the preliminary statement of the case. This affidavit, which does not appear to have been acted upon by the court, unless it may be embraced in the final act of confirmation, fails to show that the order of procedure was not his own conception, or that the motion had not been in fact filed. But were it more definite in its statement, it can not be received to contradict the record. Having suggested the procedure under the later act and carried on the litigation, without objection, in accordance therewith, the appellant is estopped to object to the verdict on the ground alleged. Having made his election he is bound by it. *Iron Gate Bank v. Brady*, 184 U. S., 665, 668; *Davis v. Wakeler*, 156 U. S., 680, 689; *Robb v. Vos*, 155 U. S., 1, 43; *Clark v. Barber*, 21 App. D. C., 274, 280: 31 Wash. Law Rep., 94.

2. The second assignment of error is that, "the court erred in proceeding in this case after an appeal was noted by the appellees from the order passed on the 4th of March, 1904, and from the decree of March 9, 1906. The first appeal referred to is based on the recital of the order of March 4, 1904, in which the court, after the filing of the mandate in this court, overruled a motion of the petitioners to confirm the verdict of the first jury. The order recites that they excepted and prayed an appeal. This order was in accordance with the mandate aforesaid. Whether it could have been appealed from or not is immaterial, as it is plain that no attempt was made to prosecute one. It is true the Commissioners were not required to give an appeal bond, but other steps were necessary. Instead of taking these, they showed that the intention had been abandoned, by coming in and filing the amended petition and prosecuting the proceeding. The record does not show the second appeal referred to. The assignment of error is without merit.

3. The third assignment relates to the failure of the court as charged to examine the jurymen, and in refusing permission to the counsel for appellant to examine them touching their qualifications. Counsel had notice of the time when the jury was impanelled and the members sworn, and could have had the opportunity to examine them and present his objections, if any, to each one. His request to examine them afterwards came too late. He made no objection to any one of them.

4. The fourth assignment of error is: "The court erred in refusing to discharge the jury on motion of appellant's counsel." This motion, referred to in the preliminary statement, was overruled March 31, 1906.

This motion came too late also. If there was any irregularity in the selection and summons of the jury, it should have been raised before they were impanelled and sworn. Moreover, the record fails to show that the jurors were not regularly selected and summoned by the marshal. It appears therefrom that each member selected was notified, by notice signed by the marshal, on February 9, 1906, of his selection, and commanded to appear for service. In support of his motion he filed an affidavit of William B. Robison, chief deputy marshal, to the effect that he had conferences with the marshal concerning the selection of jurors, and that some of the persons selected were suggested by him. He was unable to say what jurors were suggested by him, but he added that the jurors were finally selected by the marshal from the entire list under consideration, and the notices regularly served. Assuming that this affidavit might be considered, without so affirming, all that appears therefrom is that the marshal canvassed a list of names with his chief deputy, and then made his selections. There is nothing illegal or improper in the marshal's conduct. The selections were his.

5. The fifth assignment is that: "The court erred in not hearing and sustaining appellant's plea of the Statute of Limitations."

We perceive no error in denying the effect of the plea of limitations. The proceeding was a continuous one; the amended and supplemental petition was no departure from the case originally begun. It was filed as a continuation of the same proceeding under the later statute, in obedience to the order of the court founded on appellant's motion, embodying the view that the further proceedings could be had only under the later act. Moreover, the amended petition of August 9, 1904, was filed within three years after the mandate of this court had been transmitted, on January 22, 1903. And it was not until March 4, 1904, that the order was entered refusing to confirm the assessment of benefits made by the first jury. It is questionable, also, whether there is any limitation in such proceedings unless imposed by the condemnation act itself.

6. The sixth assignment is that: "The court erred in not hearing and sustaining appellant's plea of *res adjudicata*."

This plea was to the effect that the former verdict found that certain remaining parts of lots 1 and 30 in block 27, and lots 1 and 16 in block 28, would be damaged by opening of said street, and the issue is not now whether or not said lots were benefited, as that has been settled. And further, that the appellant is the holder under grants from the owner of said lots at that time, and petitioners are estopped by said verdict and its confirmation from now asserting that said lots were benefited by the said street extension.

The plea is untenable. The former verdict not only shows that the parts of the lots mentioned were condemned, and part damaged, with the assessments therefor, but also that the remaining parts of the same were found to be benefited to a considerable extent. The former verdict, when confirmed, became conclusive as to the damages,



and that question was not attempted to be reopened. The assessment for benefits having been vacated, the single purpose was to reassess the lots therefor. In general proceedings for condemnation, benefits to remaining land are to be set off against damages thereto. When separately stated in the verdicts in cases like this, one finding may be confirmed and the other vacated and opened for another assessment, as provided by the law.

The appellant, having acquired title pending the proceedings, takes subject thereto, and is bound thereby. *Wilkinson v. D. C.*, 22 App. D. C., 289, 295; 31 Wash. Law Rep., 507; *Buchan v. MacFarland*, present term, ante, page 215. Moreover, it was substantially conceded on the argument that the appellant in this case is a corporation organized for the purpose of taking over and holding the property of the former owner, John Sherman, for the benefit of his devisees.

7. The seventh assignment of error is: "The court erred in granting the first prayer on behalf of the appellees, whereby the court said, by extension of the street the jury was to understand its establishment, laying out and completion for all ordinary purposes of a public highway; and erred in refusing to grant appellant's five separate prayers for instructions; and further erred by said first instruction by saying to the jury that they might assess the benefits which had resulted to any and all other pieces of land from the extension."

(1) This first instruction copied in the preliminary statement, appears to have been a fair and just one. The purpose of the condemnation proceeding was the opening of Eleventh street for all the ordinary uses of a street. The grade was known and taken into consideration by the jury which awarded not only the value of the land actually taken, but also the damage done by the reduction of the grade which would compel the grading of the adjacent lots and portions of lots. The purpose being to open and grade the street and damages having been awarded as the result of said opening for use, it was proper to assess the benefits accruing therefrom also. Any danger, however, that the jury would consider the benefits arising from any other improvements in the street than those above mentioned was entirely removed by the second and fourth instructions. These excluded any future or speculative benefits arising from special improvements in or uses of the street subsequent to condemnation and opening as aforesaid. The benefits arising from the opening of the street, though not immediately realized in full, were so far present as to be certain and ascertainable. All that was proper in the refused instructions is contained in those given.

(2) Assuming that the record shows that assessments for benefits extended beyond the area fixed by the former law, these were made under the act of June 8, 1900, which contains no such limitation, but permitted the assessment to be made against all lands benefited by the street extension. See sec. 8, 31 Stat., 667. Committed, as we have seen, to the procedure under said act, the appellant is bound thereby. Moreover it is not perceived that any injury accrued to the appellant by reason of the extension of the area of benefits. Congress, in the exercise of its taxing power for the establishment and widening of streets, had the power to require the expense of the same to be taxed

all property found to be benefited, gener-

ally or in a defined district. *Bauman v. Ross*, 167 U. S., 548, 549. In this instance it required one-half the cost to be assessed, first in a certain district, and later to an area within the limits of actual benefits received. The latter method is the most equitable. Now, as the amount of one-half had to be assessed under any conditions, the result of the extension of the area was to relieve the lands within the former fixed area to the extent of benefits assessed against lots situated farther away. That Congress had the power to alleviate the burden imposed by the former law by extending the assessment to all property actually benefited, at the same time giving all owners an opportunity to be heard before the assessment tribunal, we think can not be successfully denied.

8. The eighth assignment relates to exceptions taken to the refusal of the court to permit the appellant to have the jurymen examined in order to show that they had not been properly selected and sworn. This question has been disposed of under the third and fourth assignments of error.

9. The ninth assignment of error is: "The court erred in not taking up and considering the evidence and the several objections and exceptions taken thereto before said jury, and the rulings of said jury and objections noted in the record."

It must be remembered that the jury are required to view the premises and then to hear evidence either in the presence of the court or not as the court may direct. 31 Stat., sec. 4, p. 666. Without objection, the court directed the hearing to be had out of its presence. Passing by the objection to this assignment of error that it does not specify the particular points of exceptions, but refers to the proceedings as a whole, we think that the bill of exceptions as taken does not authorize inquiry as to the competency of the evidence, or as to its sufficiency and weight as raised by the tenth assignment of error, which has been argued with this on the brief. It does not recite the evidence as taken before the jury, nor present an agreed statement of the same. As recited, it purports not to be a transcript of the evidence actually given, but merely an affidavit of the stenographer that it contained the substance of that evidence, which seems to have been preserved. And in conclusion it is recited that it contains, not this affidavit, but an abstract made by the appellant therefrom; and that the court declined to hear or consider the same.

Where the ground of objection is that the verdict is unsupported by the evidence, the bill of exceptions must show upon its face that it contains the substance of all the evidence given in the case. We have said that it would seem that a full report of the evidence had been made and filed in the court below, because, in proper time, before the submission of the cause, the appellees made a suggestion of diminution of the record and applied for a certiorari to bring up a transcript of the entire report of the evidence, sworn to be on file in the court below, and make it a part of the record. The application was denied because it did not appear that the report had been used as evidence on the hearing of the exceptions to the verdict and preserved by bill of exceptions. Even if the entire evidence were before us, it would be necessary to point out some apparent misconduct or plain mistake on the part of the jury of assessment to authorize its consideration, as they were required to view the premises, and were, therefore, in a

situation to know the actual conditions and to test the reasonableness and weight of the evidence. No such situation was occupied by the court passing on their verdict, as the witnesses were neither seen nor heard by him. *Shoemaker v. U. S.*, 147 U. S., 282, 305.

Having found no reversible error in the proceedings in the case, we must affirm the judgment with costs. It is so ordered.

Affirmed.

GEORGE S. COOPER, APPELLANT,

v.

ELLEN SILLERS ET AL.

PARTY WALLS; NEGLIGENCE IN USE OF; DAMAGES.

1. Appellant secured a permit to erect an apartment house, and in so doing sought to use the wall of appellees' house as a party wall. In applying for the permit he represented that the party wall was a thirteen-inch wall, but when his building was erected to the level of the fourth floor of appellees' house it was discovered that the wall was only a nine-inch wall, and he was required by the inspector of buildings to construct a steel structure to support his building and relieve the party wall of the pressure occasioned by his building. Appellees brought an action for damages, claiming that the wall was damaged and cracked as a result of its use by appellant. It was held that appellant was guilty of negligence in not ascertaining the thickness of the party wall before imposing the weight upon it which produced the damage; and the refusal of the trial court to direct a verdict for defendant held proper.
2. Damages, though accruing after the institution of the suit, may be recovered, provided they are the natural and proximate consequences of the act complained of, and do not themselves constitute a new cause of action. In such case actual damages are assessable to the time of the verdict.
3. Held, therefore, that, in the present case, appellant was liable not only for damages that occurred prior to the erection of the steel structure to support appellant's building, but for all damages that directly or proximately resulted from the injuries inflicted

No. 1795. Decided March, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,315, in action to recover for injuries to party wall. Affirmed.

Mr. JOHN RIDOUT for the appellant.

Mr. HENRY E. DAVIS and Mr. EDWIN FORREST for the appellees.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This action was brought in the Supreme Court of the District of Columbia by the appellees, plaintiffs below, against the appellant, for damages alleged to have been sustained by them as the result of the use of a party wall. It appears that the appellees are the owners and in possession of premises No. 313 H street, northwest, in the city of Washington. Appellant secured a permit for the construction of an apartment house upon the adjoining lot, and, in the construction of said apartment house, sought to use the wall of appellees' house as a party wall. In securing the permit for the construction of his building, appellant represented that the party wall was a thirteen-inch wall. He proceeded with the construction of his building, and did not discover, until he had erected his building to the level of the fourth floor of appellees' house, that the party wall was a nine-inch, instead of a thirteen-inch, wall. The attention of the inspector of buildings of the city was then called to this fact, and, upon inspection, appellant was required to construct a

steel structure to support his building, and thereby relieve the party wall from the pressure occasioned by his building. It is alleged, and considerable testimony offered in support of the charge, that the wall was damaged and cracked as a result of its use in constructing appellant's building. The case was tried to a jury in the court below, and a verdict was rendered for the appellees in the sum of \$1,500. From that judgment appeal was taken to this court.

The court instructed the jury, in substance, that the building regulations of the city could not apply to this case, as they were passed since the erection of the wall; that it is conceded that the Sillers wall is a party wall, hence it is a case only dealing with a wall in existence at the time the building regulations came in force; that appellant had an equal right with the appellees to make a reasonable use of the wall; that it is not sufficient to find that appellant used the wall, or that his use broke the wall, unless it is also found that the use was an unreasonable one, for if appellant was only making a reasonable use of the wall and it broke by reason of an existing defect, he would not be liable; that the question of reasonable use is one for the jury; that if the use made of the wall was unreasonable, and such a use as a prudent man would not have made of a nine-inch wall, and damage resulted, appellant would be liable for such damage; that if appellant negligently subjected this nine-inch wall to undue weight, and it was damaged, since appellees had abandoned all claim for depreciation in the value of their building as a place of residence, the jury can only consider if they find appellant liable, the reasonable cost of restoring the physical condition of the house, in so far as it has been damaged by the negligence of the appellant; that exemplary or punitive damages can not be imposed; that the measure of damage can only be the cost of restoring the premises to as good condition as they were in before the injury; and that the burden is on the appellees to prove that appellant was not only negligent, but that his negligence caused the injury.

Appellant offered the following prayers, requesting the court to instruct the jury accordingly, which request the court denied:

1. The jury are instructed that upon all the evidence in this case, the plaintiffs are not entitled to recover and that their verdict should be in favor of the defendant.

2. The jury are instructed as a matter of law that even if they find from the evidence that the defendant used the party wall referred to in this case, contrary to the provisions of the building regulations, that fact alone would not impose any liability upon the defendant in favor of the plaintiff.

3. If the jury find from a preponderance of all the evidence that on or about the 30th day of September, 1900, the defendant, by erecting the steel frame or structure relieved the plaintiffs' west wall from all weight of the defendant's adjoining building, then they are instructed that if they find in favor of the plaintiffs the jury are limited in awarding damages to the consideration of such negligence, if any they find on the part of defendant as occurred between the date of the use of plaintiffs' wall and the date when, if they so find, it was relieved of all burden in carrying the weight of defendant's building.

4. In no event can the plaintiff recover for damages, if any shall be found, beyond the date of filing the original declaration in this action.

5. The jury are instructed that if from all the evidence they find that no injury to the Sillers wall resulted from the imposition thereon of weight from the Cooper building, constructed as from the evidence, they find it to have been constructed, then they are instructed that, so far as the plaintiffs claim that undue actual strain or weight was imposed by defendant's building, they are not entitled to recover for any damages alleged to have resulted from such use of the Sillers wall by the defendant as they find was actually made and in respect to damages from weight or strain their verdict should be in favor of defendant.

6. The jury are instructed that there is not in this action in view of the amendment of the pleadings any definite basis for computation of damages either in respect of weight or strain or in respect of breaking of the wall of the Sillers house by the insertion of joists therein, even if they should find that such breaking occurred or that undue weight or strain was imposed.

The refusal of the court to give these instructions constitutes the sole error complained of by appellant. Reviewing briefly the instructions requested, we are of the opinion that the first one was properly refused for the reason, as we shall observe later, that there was, in our opinion, sufficient evidence offered to justify the court in submitting the case to the consideration of the jury. As to the second prayer offered by appellant and refused, the court in its own instructions charged the jury that there is nothing contained in the building regulations of the city which applies to partywalls existing at the time of the passage of these regulations. The appellant could, therefore, be in no wise prejudiced by the refusal of the court to grant his instruction. The court, however, gave the instruction requested by appellant, omitting therefrom the words "contrary to the provisions of the building regulations." In the third prayer requested by appellant it was sought to instruct the jury to the effect that, if they found that the appellant had been negligent, they could only award damages for such injuries as appellees suffered from the use of the wall between the date when appellant first used the wall and the date when it was relieved of the burden of carrying the weight of appellant's building. This request does not state the law. The appellant, if liable at all, was liable, not only for the damage that accrued during that period, but for damages that directly or proximately resulted from the injuries inflicted. The fourth prayer requested by appellant was likewise properly refused for the reason that it is not a correct statement of the law. It is well settled that though damages accrue after the institution of the suit, they may be recovered, provided they are the natural and proximate consequences of the act complained of, and do not themselves constitute a new cause of action. Actual damages in such case are assessable up to the date of the verdict. *Wilcox v. Executors*, 4 Pet., 172; *Fifth Nat. Bank v. New York Elevated R. Co.*, 28 Fed., 231; *Fowle v. New Haven & Northampton Co.*, 107 Mass., 352; *Cooke v. England*, 27 Md., 14, 34. The fifth prayer requested by appellant was fully covered in the general instructions of the court, given on its own motion, to the effect that, before the jury could return a verdict against the appellant, it

must find that actual damage was sustained by the appellees by reason of the construction of appellant's building. The mere imposing of weight and strain upon a wall, in the absence of any damage resulting therefrom, would not render the appellant liable for damages to the appellees. We think this point was fully covered by the court in its own instructions. The sixth prayer offered by appellant was properly refused, for the reason that it was equivalent to instructing the jury that, under the pleadings and evidence in the case, they should return a verdict for the appellant. As before stated, we are of the opinion that there was ample evidence, as disclosed by the record, to justify the court in submitting this case to the jury, and that it would have been error for the court not to have so submitted it.

The evidence offered on behalf of appellees tends to show that when appellant in constructing his building had reached the height of appellees' house, the appellant first discovered that the party wall was only a nine-inch wall. He then, in conformity with the requirements of the building inspector of the city, erected a steel frame or steel support to relieve the weight imposed by his building upon the party wall. It also appears that during and after the erection of appellant's building, the wall in question was injured, cracked, and made to settle. Evidence was produced to show that prior to the erection of the building of appellant, the wall and premises of the appellees were in good condition and repair, as also were the ceilings, doors, and flooring thereof. The evidence also tended to establish that, by reason of the construction of the building of the appellant, not only the wall, but the doors, windows, ceilings, and other parts of appellees' house were damaged. The damage to appellees' building was estimated by the witnesses at from \$1,200 to \$1,500.

The appellant offered evidence to show that the weight which had been imposed upon the wall was not greater than a nine-inch wall in good condition could bear without injury. He also produced evidence to show that the cracks found in the wall were old ones, due to the age of the building, and had not been occasioned by the construction of appellant's building. Appellant admitted that he did not discover that it was a nine-inch wall until he had constructed his building to a point on a level with the fourth floor of appellees' house.

We are of the opinion that appellant, by securing a building permit alleging therein that the party wall was a thirteen-inch wall, and by his admission that he did not discover that it was a nine-inch wall until he had constructed his building to a point on a level with the fourth floor of appellees' house, was thereby guilty of negligence. The negligence consisted in not ascertaining, before securing a building permit, the thickness of said wall, and in not making any investigation as to its thickness or condition, until he had imposed the weight upon it, which, according to the evidence disclosed by appellees' witnesses, produced the alleged damage. Negligence being established, the liability for damage as a result of that negligence follows. It is conceded that inasmuch as this wall had been constructed long prior to the establishment of the building regulations within the District of Columbia, that such regulations could not apply to it.

The appellant pleaded the bar of the Statute of

Limitations to the amended declaration. There is nothing, however, to show that this defense was insisted upon or specially called to the attention of the court below, and the plea seems to have been entirely abandoned by appellant. There is no assignment of error upon this point. This court will only consider errors that are properly assigned, and which have been called to the attention of the trial court and a ruling made thereon, and to which exceptions have been taken.

A motion was filed in this court by appellees to dismiss the appeal, for the reason that appellant had neglected to comply with the requirements of the rules of court in filing his briefs. The motion was not presented before the argument and submission of the case. It is, therefore, unnecessary to consider it. It is denied.

We are of the opinion that the evidence, as disclosed by the record, is sufficient to support the verdict, and that no error was committed by the trial court in instructing the jury upon the law of the case. The judgment is therefore affirmed, with costs, and it is so ordered.

Affirmed.

A. GUION JENNINGS, APPELLANT,

v.

THE PHILADELPHIA, BALTIMORE AND  
WASHINGTON RAILROAD COMPANY.

**BILL OF EXCEPTIONS; SETTLEMENT AFTER EXPIRATION OF TERM; CONSENT, HOW EVIDENCED.**

1. While a bill of exceptions in an ordinary civil cause may be settled after the expiration of the time permitted by the rules, if the opposing counsel consents thereto, nothing less than an express consent evidenced either by stipulation to that effect or by the certificate of the trial justice that such consent was given will be sufficient.
2. The fact that opposing counsel appeared at the time the bill of exceptions was submitted to the trial court and made no objection to its settlement can not be taken as equivalent to his express consent to such settlement.
3. A motion to strike out a bill of exceptions on the ground that it was submitted to the trial court for settlement after the expiration of the time fixed by the rules and to affirm the judgment granted.

No. 1869. Decided March 31, 1908.

HEARING on motion by the appellee to strike out the bill of exceptions and affirm the judgment. (For opinion on former appeal see 35 Wash. Law Rep., 175). Motion granted.

Mr. F. D. McKENNEY and Mr. J. S. FLANNERY for the motion.

Mr. E. HILTON JACKSON and Mr. HENRY E. DAVIS opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee has filed a motion to strike the bill of exceptions from the transcript of record in this case and to affirm the judgment.

The facts, as shown by the stipulation of the parties, are that the verdict for the defendant was entered in the court below on December 4, 1907; motion for a new trial was overruled and judgment for defendant for costs entered December 20, 1907. The term ended on the 31st day of December, and a new term began in January. On January 10, 1908, an appeal bond was approved and filed. On January 14th the appellant, having given eight days'

notice in compliance with rule 55 of the Supreme Court of the District of Columbia, accompanied by a copy of his proposed bill of exceptions, presented the said bill to the court for settlement. The facts in regard to this presentation are recited as follows in the stipulation:

"In pursuance of common law rule No. 55, counsel for the appellee was present, having received the eight days' notice together with a copy of appellant's proposed bill of exceptions required by said rule. The proposed bill of exceptions was submitted to the court by counsel for the appellant in the presence of and without objection from counsel for the appellee."

On February 11th the bill of exceptions was signed by the trial judge and filed now for then.

The common law rule that a bill of exceptions must be settled before the regular close of the term has been changed by section 2 of common law rule 54 of the Supreme Court of the District of Columbia, which provides as follows:

"The bill of exceptions must be settled before the close of the term, which may be prolonged by adjournment in order to prepare it, but not longer than thirty-eight days, exclusive of Sundays, save in the case of a trial begun during a term but not concluded until after the expiration of the term, in which case the trial justice may extend the term in his discretion in order to prepare a bill of exceptions."

Common law rule 55, in accordance with which notice was given to appellee of the intention to present the bill of exceptions, provides generally that every bill shall be prepared and submitted to the counsel on the other side; if not settled before the jury retires, notice shall be given to opposing counsel of the time at which it is proposed the bill of exceptions shall be settled, and shall, at least eight days, exclusive of Sundays, before the time designated in such notice, submit to the opposing counsel the bill of exceptions so proposed to be settled, and the said exception shall be presented to the court within thirty-eight days, exclusive of Sundays, after judgment shall have been entered therein, unless the trial justice shall, for good cause shown, extend the time for the presentation thereof, etc.

Rule 55 was not intended to affect the operation of rule 54. Its purpose is to secure the fair settlement of a delayed bill of exceptions by requiring the delivery of a copy of the proposed bill of to the opposing party with notice of the time its intended submission to the trial justice for its settlement. It operates within the term during which the trial was had, and within the term of its prolongation when made in accordance with the provision of section 2 of rule 54. Whether the permission to the trial justice to further extend the term for presentation of the bill, given by rule 55 would be available after the expiration of the trial term, is a question that does not arise in this case.

When a bill is presented without the notice required, but within the term, the trial justice may nevertheless settle it. *Lindsey v. Pennsylvania R. Co.*, 26 App. D. C., 125: 34 Wash. Law Rep., 95. But he is not compelled to do so. *Johnson-Wynne Co. v. Wright*, 28 App. D. C., 375: 35 Wash. Law Rep., 2. If the bill is presented and settled after the expiration of the time permitted, it will not be considered. *Talty v. D. C.*, 20 App. D. C., 499: 30 Wash. Law Rep., 774.

It seems that a bill of exceptions in an ordinary civil case may be settled after the expiration of the time permitted by the rules, if the opposing counsel consents thereto.

It is contended that the facts recited in the stipulation show such a consent. We do not concur in this view. When given notice of the intention to submit the bill of exceptions, the counsel for the appellee appeared. The facts do not show that he consented to the settlement of the bill of exceptions, but simply that he made no objection thereto. He was not called upon to give his express consent, and his failure to state at the time that he objected to the settlement of the bill because the time therefor had elapsed was not the equivalent of such an express consent. Nothing less than an express consent evidenced either by stipulation to that effect, or by the certificate of the trial justice that he had given his consent will be sufficient. It would be an unsafe practice to permit a bill of exceptions to be settled under such circumstances. It is true that the parties have agreed in this case to the fact that no objection was made. But the fact that none was made would be equally effective if shown to be true, in a case where the fact might be controverted. This would lead to the introduction of affidavits in regard to what may have occurred in the presentation of the bill, and to the raising of new issues not contemplated in an appellate tribunal. *Talty v. D. C.*, 20 App. D. C., 489, 493; 30 Wash. Law Rep., 774.

It follows that the motion to strike the bill of exceptions from the record is well taken and must be granted. There being nothing in the record on which error can be assigned without a bill of exceptions, the judgment must be affirmed with costs. Affirmed.

**Railroads—Care Required as to Trespassers.**—A railroad company having occupied a crossing with a freight train for a period not unreasonable, a traveler, attempting to cross between the cars was a trespasser, as to whom the railroad company owed no duty until after his peril was discovered. *Southern Ry. Co. in Kentucky v. Clark (Ky.)*, 105 S. W. Rep., 384.

**Claims in Bankruptcy—Proof by Corporation.**—General Order 21.—It is held, in *Matter of E. Reboulin Fils & Co.*, 19 Am. B. R., 215, that a corporation may make proof of claim against a bankrupt estate by its agent or attorney in fact when sufficient reason is shown why it should not be made by its treasurer, or if it has none, by the officer whose duties most nearly correspond to those of treasurer, as provided by General Order 21.

**Master and Servant—Defective Appliances.**—A master held negligent in providing a platform 6 feet wide, 14 feet long, and 18 feet from the ground, for the use of employees, without a railing. *Aiken v. Rhodhiss Mfg. Co. (N. C.)*, 59 S. E. Rep., 696.

**Master and Servant—Assumed Risk.**—A drillman injured in a mine while assisting in moving a drill in the usual manner held to have assumed the risk, notwithstanding a complaint made to the ground foreman of the danger and his promise of amendment, which he had neither actual nor apparent authority to perform. *United Zinc Companies v. Wright, U. S. C. C. of App., Eighth Circuit*, 156 Fed. Rep., 571.

**Contracts—Accrual of Cause of Action.**—A cause of action for breach of covenant against incumbrances made by a person subsequently deceased is not enforceable against his estate until the covenantee suffers actual damages. In re *Hanlin's Estate (Wis.)*, 113 N. W. Rep., 411.

**Contracts—Liability of Third Persons.**—Where a contract is made for the benefit of a third person, and he avails himself of its advantages, the law creates a privity, and he must bear the burdens of a party to the contract. *Meridian Life and Trust Co. v. Eaton (Ind.)*, 82 N. E. Rep., 480.

**Contracts—Substantial Performance.**—Though a building contract was entire, held, that the contractor having in good faith endeavored to perform, he may recover the value to the owner of the work done, though it lacks absolute completeness. *Manthey v. Stock (Wis.)*, 113 N. W. Rep., 443.

Every d of this office for publishing notices absequeu  
in ruleants in divorce proceedings requires payment  
of advance.

Notice of cost will be sent solicitor on receipt of order  
from the Clerk of the Supreme Court, District of Colum-  
bia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### FIRST INSERTION.

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry F. Andrews, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of April, 1908. WILLIAM A. ANDREWS, 1621 Newton st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,056. Administration. [Seal.] 16-3t

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Persis A. Cleveland, Deceased.  
No. 15,178. Administration Docket 88.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, the executor therein named, it is ordered this 17th day of April, A. D. 1908, that Emma Atkins Churchill, Persis Atkins Livesley, Frank Rufus Atkins, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

[Seal] said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street, N. W.

**Legal Notices.**

R. P. Shealey, Solicitor

In the Supreme Court of the District of Columbia.  
 Agnes B. Cudmore et al. v. John J. Cudmore et al.  
 No. 27,231. Equity Docket No. 80.

The object of this suit is to obtain the sale of lot 142, square 619, improved by premises No. 1206 North Capitol street, in the city of Washington, District of Columbia, for the purpose of administering and partitioning the estate of Charles E. Cudmore, deceased. On motion of the plaintiffs, it is, this 14th day of April, A. D. 1908, ordered that the defendants, John J. Cudmore and Michael T. Cudmore, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 16-3t

J. D. Leonard and W. L. Ford, Attorneys  
 In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

Estate of Henry Haight, Deceased.  
 No. 15,174. Administration Docket 83.

Application having been made herein for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Amanda J. Haight, it is ordered this 14th day of April, A. D. 1908, that Helen Haight, infant, and all others concerned, appear in said court on Wednesday, the 20th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days

[Seal] before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 16-3t

W. A. McKenney, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of Charles E. Wood, Deceased.  
 No. 15,162. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by American Security and Trust Company, it is ordered this 13th day of April, A. D. 1908, that Mary Van de Boe, Pearl Wood, Imogene Michael, Lillian D. Moon, Hattie Barbee, Ada C. Shane, Jessie Wood, Edric Wood, William E. Harmon, Clifford B. Harmon, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

C. H. Cragin, Attorney  
 In the Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of Allen Dodge, Deceased.  
 No. 15,179. Administration Docket 83.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles H. Cragin, the executor named in said will, it is ordered this 15th day of April, A. D. 1908, that William M. C. Dodge, Francis H. Dodge, Sarah Esther Freeman, Henry Henley Dodge, Donald D. Dodge, Francis T. Dodge, Bessie D. Chester, Annah H. D. Cooke, Kate D. Augur, Emily J. Dodge, Neenah D. Townsend, William Dodge, Jr., Mary Mason Wynkoop, Richard Mason Dodge, Benjamin P. Poore Mosely, Anne W. D. Boggs, Emily Dodge, Elizabeth C. Dodge, and Eben G. Dodge, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star, once a week for three successive weeks before the return day herein mentioned, the first publication to

[Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

**Legal Notices.**

J. H. Taylor, Attorney

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.  
 Estate of Mary J. Nourse, Deceased.

No. 15,159. Admin.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James B. Nourse and Richard Douglass Simms, executors in said will named, it is ordered this 15th day of April, 1908, that Charles N. Simms, of Charleston, West Virginia; Rosa D. Chew Williams, of Baltimore, Maryland; Jannett B. Chew Clagett, of Frederick County, Maryland; Constance Nourse, Mary P. Nourse, Charlotte St. G. Nourse, Walter P. Nourse, and Annie C. Nourse, of Fauquier County, Virginia; Charles J. Nourse, Jr., 3d, Julia Nourse, Jr., and Julia L. Nourse, of New York City, State of New York, and all others concerned, appear in said court on Monday, the 18th day of May, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 16-3t

John B. Lerner, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of William J. Sibley, Deceased.  
 No. 7742. Administration Docket 23.

Application having been made herein for probate of the last will and testament of said deceased, as to real estate on said estate, by the Washington Loan and Trust Company, the executor in said will named, it is ordered this 17th day of April, A. D. 1908, that the unknown heirs at law and next of kin of Israel H. Sibley, Albert G. Sibley, and Richard Thomas Jones, Cecilia Ann Hoyer, nee Benson, Julia Sibley, and William Sibley, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-3t

Worthington, Heald &amp; Fraley, Solicitors

In the Supreme Court of the District of Columbia.  
 The Board of Foreign Missions of the Presbyterian Church in the United States of America, a Body Corporate, et al., Complainants, v. Louisa M. Breckenridge et al., Defendants. Equity No. 25,847.

The object of this suit is to obtain a decree adjudging that the title to the following described real estate in the District of Columbia was acquired and held by Caroline M. Noble, during her lifetime, as trustee for the estate of Jonathan H. Noble, deceased, and not in her own right, and for the sale of said property by trustees appointed by the court, and a distribution of the proceeds in accordance with the will of Jonathan H. Noble. Said real estate is described as follows: Lot lettered "A" in the subdivision of lots numbered 64, 65, 66, and 67 in Wright and Cox's subdivision of part of Pleasant Plains, in the county of Washington, as recorded in liber levy court No. 2, folio 25, of the records of the office of the surveyor of the District of Columbia; also the east 15 feet front of original lot 14, in square 1058, by the full depth thereof; also lots 59, 60, 61, in square 1018, as recorded in book 19, page 62, of the records of said surveyor's office, the last four described parcels being situated in the city of Washington. Upon motion of the complainants it is this 15th day of April, 1908, ordered that the defendant, Arvilla Maude Wilcox Kidder, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this notice be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] ASHLEY M. GOULD, Justice. A true copy. John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 16-3t



**Legal Notices.**

W. A. Johnston, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In Re Estate of William M. Starr, Deceased.  
No. 15,102.

Application having been made to the Supreme Court of the District of Columbia, holding a Probate Court for the probate and record of the last will and testament of William M. Starr and for letters of administration with the will annexed by Hannah Hull, it is this 11th day of April, 1908, ordered that Henry Morningstar, Logan Morningstar, Ogden Morningstar, Hie Morningstar, Nancy Coleman, Lavinia Bokruff, Louise Moore, Lizzie Porter, Ollie Bowler, William Christie, Levi Morningstar, Charles Morningstar, Rena Morningstar, Fritz Morningstar, Frank Morningstar, Cora Cain, Hannah Long, Eliza Meek, Susan Robins, Elliot Christy and Hannah Morningstar, heirs at law and next of kin of the said William M. Starr (deceased), and all others concerned, appear in said court on the 18th day of May, A. D. 1908, at 10 o'clock A. M., and show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Washington Herald newspaper, once a week for three successive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty days before the said return day.  
ASHLEY M. GOULD, Justice. A true copy.  
Attest: James Tanner, Register of Wills. 16-St

Ralston and Siddons, Solicitors  
In the Supreme Court of the District of Columbia.  
Patrick O'Toole v. the Unknown Heirs, Devisees and  
Alienees of Henry Stall.  
No. 27,686. Equity Docket 61.  
ORDER OF PUBLICATION.

The object of this suit is to declare the title to part of original lot numbered seven (7) in square numbered one hundred and forty-four (144) in the city of Washington, District of Columbia, beginning on Nineteenth street 22 feet 10 1/4 inches from the north west corner of said lot and running thence east 140 feet; thence south 22 feet 10 1/4 inches; thence west 140 feet; and thence north 22 feet 10 1/4 inches to the place of beginning, to be good in fee simple in the complainant by reason of adverse possession thereof for more than forty-eight years. On motion of complainant, it is, this 18th day of April, A. D. 1908, ordered, that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of the date of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive

months in The Washington Law Reporter and [Seal] Evening Star before said day. By the Court:  
ASHLEY M. GOULD, Justice. A true copy.  
Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.  
apr 17, 24, may 15, 22, june 19, 26

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Helen L. Sumner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of April, 1908. WILLIAM D. HOOVER, 15th st. and New York ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,045. Admn. [Seal.] 16-St

Supreme Court of the District of Columbia,  
Holding a Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick, otherwise known as Friedrich Klinghorst, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of April, 1908. GUSTAVE DITTMAR, 702 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,200. Administration. [Seal.] 16-St

**Legal Notices.**

Chas. A. Barnard, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Hitz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of April, 1908. JOB BARNARD, U. S. Court-house; MARY L. BARTON, 947 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,177. Admn. [Seal.] 16-St

**SECOND INSERTION.**

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frances H. Tolman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1908. JAMES P. TOLMAN, 409 4th st. N. E.; FRED G. COLDREN, Century Building, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,184. Administration. [Seal.] 15-St

Newcomb, Churchill & Frey, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Jane Eliza Bradt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. JANE BRADT, 1223 Q st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,096. Administration. [Seal.] 15-St

Nelson Wilson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard H. Lansdale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1908. MARY S. LANSDALE, 1214 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,881. Administration. [Seal.] 15-St

Hugh T. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Etta B. Stewart, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 4th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of April, 1908. LUCIA G. M. COSTIN, Admx., by Hugh T. Taggart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,772. Administration. [Seal.] 15-St



**Legal Notices.**

Lester &amp; Price, Attorneys

In the Supreme Court of the District of Columbia.

Andrew W. Kirk et al., Complainants, v. Alice C. DeVaughn et al., Defendants, and Frank DeVaughn Phillips et al., Cross-Complainants, v. Andrew W. Kirk et al., Cross-Defendants. Equity, No. 27,423.

The objects of the cross-bill filed herein are: (1) to judicially establish and perfect of record the legal title in fee simple of the cross-complainant, Frank DeVaughn Phillips (defendant in original bill filed herein), in and to all of lots numbered one and two in square numbered four hundred and eighty-three, in the city of Washington, District of Columbia, and in and to those parts of lots numbered twenty and twenty-two in square numbered three hundred and seventy-eight in said city within the following metes and bounds, namely: beginning at the northeast corner of lot numbered 22 and running thence south along the west side of Ninth street 25.54 feet; thence west 110 feet; thence north 25.54 feet; thence east to the place of beginning; (2) to judicially establish and perfect of record the legal title in fee simple of cross-complainant Ernest S. Bartlett (defendant in said original bill) in and to that part of lot numbered twenty-one in said square numbered three hundred and seventy-eight, within the following metes and bounds, namely: beginning at the northeast corner of said lot and running thence south along the west line of Ninth street 19 feet 6 inches; thence west 63 feet 4.5 inches; thence north 19 feet 6 inches, and thence east to the place of beginning; (3) to perpetuate the testimony to be taken on behalf of said cross-complainants hereto; and (4) to perpetually enjoin the defendants in said cross-bill named, and all persons claiming by, through or under them, or any of them, from ever asserting by suit or otherwise, any claim, right or title to said real estate or any part or parcel thereof. On motion of said cross-complainants, it is this 8th day of April, A. D. 1908, ordered that the defendants, Iola F. Spaulding and Alice C. DeVaughn, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, devisees and devisees of William F. DeVaughn, Jr., the unknown heirs, devisees and devisees of Jane Davis, the unknown heirs, devisees and devisees of Addison DeVaughn, and the unknown heirs and the unknown devisees and devisees of any such heirs, if any there be, of Samuel DeVaughn, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three weeks after the day of the first publication of this order (good cause for fixing such time for such appearances having been shown to the satisfaction of the court); otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks, and twice a month during the said period of three weeks herein above prescribed, in The Washington Law Reporter and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-3t

M. J. Keane, Solicitor

In the Supreme Court of the District of Columbia.

Joanna Chisholm v. Agnes O. Moore et al.  
No. 27,078. Equity Docket, No. 61.

The object of this suit is to sell for partition the following described property of which the late John O'Connor died seized and possessed, to wit: The west twenty (20) feet front by full depth of original lot nine (9), in square seven hundred and seventy-seven (777), and described as follows: Beginning at northwest corner of said lot, thence south one hundred and twenty (120) feet; thence east twenty (20) feet; thence north one hundred and twenty (120) feet to H street, and thence west twenty (20) feet to beginning, located in the city of Washington, District of Columbia. On motion of the plaintiff, it is, this 9th day of April, A. D. 1908, ordered that the defendant, Martin O'Connor, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-3t

**Legal Notices.**

C. E. Emig, Solicitor

In the Supreme Court of the District of Columbia.  
Harriet S. Smith v. Charles A. Baker, Trustee, et al.  
Equity, No. 27,007.

The object of this suit is to vest title in the complainant in and to lot 81, block 8, of the subdivision of White Haven and Harlem, as per plat recorded in the surveyor's office of said District in county book 8, at folio 124, and on motion of complainant, it is, this 8th day of April, 1908, ordered that the defendants, Ida M. Smith, Arthur G. Smith, Frederick M. Smith, Helen Smith, Stella Smith, Harry Smith, Burton Smith, and Ralph Smith, if they be living, and the unknown heirs, devisees, and alienees of such of them as are dead, cause their appearance to be made herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided the copy of this order be published once a week for four successive weeks prior to such return in The Washington Law Reporter and

[Seal] in The Washington Evening Star. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 15-3t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Beattie Lanston, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1908. AMERICAN SECURITY AND TRUST COMPANY, William A. McKenney, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,148. Administration. [Seal.] 15-3t

Henry H. Glassie, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise A. B. Hughes, Deceased.  
No. 14,732. Administration Docket —

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 3d day of March, 1902, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Clara C. Mitchell, Marian G. Wilson, Anna C. Grief, Sumpter Calvert, Charles H. Hiern, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma T. Brown, Kittie White, Pattie Weeks, and unknown heirs at law and next of kin of Louise A. B. Hughes, "not to be found," it is, this 9th day of April, 1908, ordered that the issues be set down for trial on the 11th day of May, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writing was procured by fraud or undue influence and whether testatrix was of unsound mind [Seal] on March 3, 1902. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-4t

Beall &amp; Marine, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Agnes Wilson Hedges, Deceased.  
No. 15,087.

Application having been made by Walter S. Wilson for the probate of the last will and testament of Agnes Wilson Hedges, and that letters of administration cum testamento annexo upon her estate be granted, it is ordered, this 9th day of April, 1908, that George S. Wilson, Allen Grant Wilson, William R. Wilson, and all others interested in said estate appear in said court at 10 o'clock A. M., Monday, the 18th day of May, to show cause, if any they can, why such application should not be granted. Let notice thereof be published in The Washington Law Reporter and Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication day to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 15-8t

**Legal Notices.**

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Beverly Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. JOHN W. GLENNAN, 523 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,051. Administration. [Seal.] 15-St

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration d. b. n. on the estate of Jesse N. Seale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3rd day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3rd day of April, 1908. MARY E. BIRCHETT, 4343 Lindell Biv., St. Louis, Mo. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,966. Administration. [Seal.] 15-St

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick H. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. ROBERT L. MONTAGUE, 617 L. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,185. Administration. [Seal.] 15-St

**Wm. Stone Abert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary Abert Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of April, 1908. WILLIAM STONE ABERT, 408 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,182. Administration. [Seal.] 15-St

**David Rothchild, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph A. Kaschka, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. CHAS. E. GERNEH, 229 7th street N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,624. Administration. [Seal.] 15-St

**Legal Notices.**

**J. J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jennie H. Scott, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of April, 1908. ALBERT F. FOX, No. 911 F st. N. W.; JOSEPH J. DARLINGTON, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,961. Administration. [Seal.] 15-St

**Charles T. Hendler, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Preston B. Wright v. Sarah T. Wright and John M. McClintock, Defendants. Equity, No. 27,661.**  
 The object of this suit is to obtain an absolute divorce from the defendant Sarah T. Wright on the ground of adultery committed with the defendant John M. McClintock. On motion of the complainant, it is, this 8th day of April, A. D. 1908, ordered that the defendants, Sarah T. Wright and John M. McClintock, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three consecutive weeks prior to said day in The Washington Law Reporter and The Evening Star. By the Court: ASHLEY M. GOULD, Associate Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 15-St

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Andrew Matsen, Deceased.**  
**No. 15,167. Administration Docket.**  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by E. S. Mussey, it is ordered this 9th day of April, A. D. 1908, that Tomene Matsen, of Forsgrund, Norway, and all others concerned, appear in said court on Tuesday, the 12th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal.] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-St

**J. Dawson Williams and B. H. Warner, Jr., Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Mejia, Their Unknown Heirs, Alienees, and Devisees, If Any or All be Dead. In Equity, No. —.**  
 The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, Jesse B. Rank, to sublots 34, and 66 to 88, both inclusive, and the east 6.25 feet of subplot 66 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant, George W. Montgomery, of sublots 35 to 41, both inclusive, and the east 6.25 feet of subplot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in [Seal] The Washington Law Reporter and The Evening Star newspaper before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. april 10, 17; may 15, 22; june 12, 19

**Legal Notices.****Wilson & Barksdale, Attorneys**

In the Supreme Court of the District of Columbia.  
 Emil G. Bruehl, Plaintiff, v. George J. Michelbacher,  
 Defendant. At Law, No. 50,886.

The object of this suit is to recover seventy-two dollars and nine cents (\$72.09), with interest thereon from July 17, 1908, at the rate of 6 per cent per annum, and costs of suit, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 7th day of April, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The

[Seal] Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 15-8t

**Edwin C. Dutton, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of Frederick Luck, Deceased.

No. 15,145. Administration Docket —

Application having been made herein for letters of administration on said estate, by Edwin C. Dutton, it is ordered this 3d day of April, A. D. 1908, that the unknown heirs at law and next of kin of the said Frederick Luck, deceased, and all others concerned, appear in said court on Monday, the 11th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first

publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-8t

Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Emma G. Hoyt, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 27th day of April, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of April, 1908. JOHN PAUL EARNEST, 823 1/2 st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,421. Administration. [Seal.] 15-8t

**Marion T. Clinkscales, Attorney**

Supreme Court of the District of Columbia,  
 Holding Probate Court.

Estate of Harriet C. Bender, Deceased.

No. 15,134. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Louisa Lemkens, the executrix named in said last will, it is ordered this 23d day of March, A. D. 1908, that all the unknown heirs at law and next of kin, and all others concerned, appear in said court on Friday, the 1st day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 15-8t

Justice blanks of every description for sale at this office.

**Legal Notices.****J. H. Lichliter, Attorney**

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas M. Boland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of April, 1908. MARY A. BOLAND, 222 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,183. Administration. [Seal.] 15-8t

**William A. McKenney, Attorney**

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen A. Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of April, 1908. AMERICAN SECURITY AND TRUST COMPANY, William A. McKenney, Atty. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,967. Administration. [Seal.] 15-8t

**THIRD INSERTION****J. H. Taylor, Solicitor**

In the Supreme Court of the District of Columbia.  
 Ella L. Warfield v. Unknown Heirs, Devisees, and  
 Alienees of Andrew Schofield, or Schofield, and  
 Minnie Fuller. Equity, No. 27,621.

The object of this suit is to establish complainant's title by adverse possession to lots 11, 12, and 13 of Fuller's subdivision in square 60. On motion of the complainant, it is, this 12th day of March, 1908, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during the three months in The Washington Law Reporter

[Seal] and The Washington Herald. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. mar. 20, 27; apr. 17, 28; may 24, 31

**Wm. D. Hoover, Attorney**

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In the Matter of the Estate of Lizzie Dewey, Deceased.  
 Admn. No. 14,948. Docket.

The National Savings and Trust Company having reported to the court that it has received an offer from Jessie Oelrich to purchase lot numbered fifty-eight (58) in William H. Clagett's subdivision of block numbered thirty (30), "Long Meadows," in the District of Columbia, described in its report duly filed in these proceedings, at and for the price of fourteen hundred dollars (\$1,400), upon the terms of two hundred dollars (\$200) cash and twelve hundred dollars (\$1,200), to be secured by deed of trust, and to bear interest at the rate of six per cent (6%) per annum; it is, by the court, this 3d day of April, A. D. 1908, ordered that said offer be accepted and said sale ratified and confirmed, unless cause to the contrary be shown on or before the 4th day of May, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Evening Star, once a week for three successive weeks prior to said last

[Seal] mentioned date. By the Court: ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 14-8t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street N. W.

**Legal Notices.**

**J. Clarence Price, Attorney**  
In the Supreme Court of the District of Columbia.  
In re the Assignment of Charles R. Talbert.  
Equity No. 27,857.

J. Clarence Price, assignee, having reported the sale of the west forty feet seven inches on Maryland avenue by the full depth of lot numbered two in square numbered ten hundred and twenty-seven, in the city of Washington, District of Columbia, to Charles R. Talbert, for \$2,725, out of which is to be paid the sum of fourteen hundred ninety-one dollars and eighty-eight cents and accumulated interest thereon (the amount of the first trust on said property), it is this 31st day of March, A. D. 1908, ordered by the court that said sale be and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 1st day of May, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named date in The Washington Law Reporter.  
[Seal.] **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 14-3t

**Frank P. Leary, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edgar Ramsay Lowe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. **DAVID E. L. BRUNER**, 1325 Corcoran st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,170. Administration. [Seal.] 14-3t

**McGowan, Serven & Mohun, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Francis S. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of April, 1908. **MARY H. DODGE**, 1821 Belmont Road. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,169. Administration. [Seal.] 14-3t

**Wm. E. Ambrose, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Missouri, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Sophia S. Seale, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of March, 1908. **MARY E. BIRCHETT**, 4848 Lindell Biv., St. Louis, Mo. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,160. Administration. [Seal.] 14-3t

**B. W. Parker, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anne A. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of March, 1908. **ROBERT J. UMSTAEETTER**, 2130 Le Roy Place. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,163. Administration. [Seal.] 14-3t

**Legal Notices.**

**Wm. D. Hoover, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary M. Walter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **NATIONAL SAVINGS AND TRUST CO.**, by George Howard, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration. [Seal.] 14-3t

**Carter & Brooke, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Hans Hansen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **JESSE D. NEWTON**, I. C. Commission. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,771. Administration. [Seal.] 14-3t

**John B. Larner, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rufus Saxton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of March, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, by Fred'k Elcheiberger, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,142. Administration. [Seal.] 14-3t

**Birney & Woodard, Attorneys**

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**Joseph H. Stewart and George H. White, Complainants, v. Archibald Lewis, et al.** No. 27,274, Equity. The trustee in this cause having reported that he has sold lot 26 in Walter S. Cox's trustee's subdivision of original lot 21 in square 514 at the price of \$885.00, subject, however, to a deed of trust to secure \$3,500.00, it is this 30th day of March, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 24th day of April, 1908. Provided a copy of this order be published in The Washington Law Reporter and in The Washington Herald once a week for three weeks before said day. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 14-3t

**Walter C. Clephane, Alan O. Clephane, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah Catharine Tise, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of March, 1908. **GEORGE TISE**, Hyattsville, Md.; **CHAS. L. DEMAVEST WASHBURN**, 1746 Corcoran st., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,132. Administration. [Seal.] 14-3t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - APRIL 24, 1908

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### Street Railways; Policemen as Passengers.

In *Gabbert v. Hackett*, decided by the Supreme Court of Wisconsin in March, 1908 (115 N. W., 345), the action was for personal injuries. It appeared that the plaintiff, a police officer, entered a street-car in good faith believing that he had a right to ride free, and was permitted to ride because of a custom based on an ordinance requiring the free transportation of policemen and firemen. The trial court rendered a judgment in favor of the plaintiff, and this judgment was affirmed by the Supreme Court, which held that the plaintiff was a passenger, even if the ordinance referred to was void under the law prohibiting the granting of free transportation. The court lays down the rule that one who enters and takes passage in a street-car with the consent of the company and does not refuse to pay fare, is not a trespasser, and that the mere failure to pay fare does not deprive one riding on a street-car of his rights as a passenger, nor does it convert his relation to the carrier into that of a mere licensee.

### Measure of Damages for Conversion.

In the case of *Wallingford v. Kaiser*, decided March 15, 1908, by the Court of Appeals of New York, and reported in the *New York Law Journal*,

the action was in trover for the conversion of a number of horses seized by the defendant under an attachment issued to him as the sheriff of Erie County, in that State, the animals being taken from a railroad train at East Buffalo while in course of transportation from Chicago, Ill., to Liverpool, England. The court states the general rule in trover as being that the owner's measure of damages is the value of the property at the place of conversion, if there is a market for it at that place; but it is held that this rule does not apply when the goods are converted by a stranger at an intermediate point while in course of transportation. In such a case, when the property was wrongfully taken while on its way to a profitable market, the owner is entitled to recover the value of the goods at the place of destination, less the cost of carriage and of effecting a sale thereof in that market. The defendant's lack of information as to the particular destination of the property is declared not to be available to him in mitigation. In the case before the court the measure of damages was held by the trial court to be the value of the horses in Liverpool, less the cost of transportation and the sale of them at that place, and its ruling is affirmed by the Court of Appeals.

THE announcement is made that a new work entitled "Prayers and Instructions," by Mr. Armstrong Thomas, of the Baltimore bar, will be issued in May. The work will treat of the law of instructions to juries in Maryland and the District of Columbia, and will include about one thousand forms of prayers and instructions that have been approved by the Court of Appeals of Maryland, the Supreme Court and Court of Appeals of the District of Columbia, and the Supreme Court of the United States. Mr. Thomas is also the author of "Thomas' Procedure in Justice Cases," a Maryland work that has been highly commended.

### Conversations Over Telephones.

The admissibility in evidence of a conversation over the telephone was considered by the Court of Appeals of Kentucky in the recent case of *Holzhauser v. Sheeny*, 104 S. W. Rep., 1034. The attorney for the plaintiff, having ascertained the number of defendant's telephone from the directory, called up and conversed with her. It was not shown that he knew her voice or that he asked her name. The court held, however, that the subject of the conversation and the circumstance of defendant's answering at the number of her address were sufficient identification to charge her as being the person with whom the conversation was had.

# Court of Appeals of the District of Columbia.

MARY DOD WALKER, APPELLANT,

v.

DAVID WARNER ET AL.

## DEEDS; DELIVERY; PRESUMPTIONS; SUBSEQUENT CONDUCT OF PARTIES; DEPOSITIONS.

1. No particular form or ceremony is essential to the effective delivery of a deed; but words or acts showing an intention that the deed shall be complete and operative constitute a good delivery.
2. Possession alone of a deed by the grantee is prima facie evidence of its delivery; and this presumption of delivery based on possession is so strong that it can only be overcome by clear and convincing proof that there had been no delivery.
3. The intent of the parties is to be determined by what occurred at the time of the transaction. When a deed sufficient to vest a title is executed and delivered the law raises the presumption of an intent to pass the title in accordance with its terms.
4. The fact that a deed once delivered is withheld from record for a long period, or until the death of the grantor, either at or without the request of the latter, will not impair its effect as a conveyance of the title or operate any extinguishment.
5. Nor will the additional fact that the grantor was permitted to remain in possession and control of the property conveyed defeat the legal consequence of the actual delivery of the deed.
6. The subsequent conduct of the parties can not be made the ground of inference as to the intent of the parties at the time of actual delivery of the deed in order to rebut the presumption arising from its execution and acknowledgment by the grantor and its possession by the grantee; though where there is evidence of circumstances raising a doubt as to whether there was in fact a delivery of the deed, or whether it had properly come into possession of the grantee, the fact of the retention of possession and control by the grantor, coupled with the failure to record the deed, if unexplained, might be of weight in determining whether the deed had in fact been delivered.
7. In an action of ejectment, the question turned on whether there had been a delivery of the deed under which plaintiff claimed. The grantor was a former slave in the family of the grantee, and remained with the family after her freedom. She had no children or near kin. The deed was executed and acknowledged before a notary public and was immediately delivered to the grantee, who retained possession of it, but did not record it until the death of the grantor, the latter having meanwhile remained in possession and control of the property. It was held that upon these facts the trial court should have directed a verdict for the plaintiff, and its refusal so to do was error.
8. In a deposition taken upon interrogatories and cross-interrogatories, a general interrogatory, "Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yes, set forth the same fully and at length in your answer," is improper, in that it fails to inform opposing counsel of the answer expected so as to enable a cross-examination to be had thereon, but such defects go to the form of the deposition, and should be called attention to, in advance of the trial, by motion to exclude or to suppress the answer.

No. 1808. Decided

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,078, entered upon the verdict of a jury in an action of ejectment. Reversed.

Mr. C. C. TUCKER and Mr. J. M. KENYON for the appellant.

Mr. J. C. GITTINGS, Mr. J. M. CHAMBERLIN and Mr. R. J. KENNEDY for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant brought this action in the Su-

preme Court of the District of Columbia on November 4, 1906, against the appellees to recover the possession of lot 89 in Thomas and Perry's subdivision of lots in square 181, in the city of Washington, and the value of the use and occupation of the same from and after March 1, 1904. Issue was joined on defendants' plea of the general issue, not guilty.

Plaintiff claimed under a deed purporting to have been executed by Rebecca Thompson, under seal, on September 13, 1898. Upon a recited consideration of one dollar paid to the grantor, the deed conveyed the title to the lot aforesaid to the plaintiff, Mary Dod Walker. That the deed was signed, sealed and delivered in his presence was attested by the signature of Clarence F. Donohoe. It bore a certificate of the said Donohoe as a notary public under date of September 13, 1898, of the acknowledgment of execution by the grantor. It was endorsed as recorded by the recorder of deeds for the District of Columbia on February 29, 1904.

Clarence F. Donohoe, called as a witness by plaintiff, testified as follows:

That in September, 1898 he was a notary public in and for the District of Columbia; that on the 13th day of September, 1898, at the request of the plaintiff he called at her house, No. 202 A Street, Northeast, Washington, D. C., to take an acknowledgment of a deed. There lay upon the table a deed purporting to be a deed in fee simple from Rebecca Thompson to the plaintiff, Mary Dod Walker, and testified that he took the acknowledgment of Rebecca Thompson, whom he saw sign said deed. There were present at the time, the plaintiff, Rebecca Thompson and himself. On cross-examination the witness testified that before taking the acknowledgment he asked the grantor, Rebecca Thompson, whether she knew what the paper was and she said she did; and she further stated that she wanted Mrs. Walker, the plaintiff, with whose family she had long lived, to have the property and everything she had. That when he reached the house he was shown into the parlour and Rebecca was called by the plaintiff and came into the room from the kitchen. She was a colored woman whom witness judged to be between 65 and 70 years of age; he had never seen her before, nor has he ever seen her since. She was introduced to witness by the plaintiff. Witness did not read the deed to grantor, nor was it read to her in his presence. No consideration passed from the plaintiff to the grantor in his presence. The deed was on the table when witness arrived at the house and it remained there while he was present and was there when he left, there having been no manual delivery of it.

The said deed was thereupon shown to witness and he identified it as the one which had been acknowledged before him.

Plaintiff's deposition, on her own behalf, taken in Florence, Italy, stated the following facts:

"In 1898 I resided with my family and Rebecca Thompson at 202 A street, southeast, Washington, D. C. I was acquainted with Rebecca Thompson, deceased, from 1865 until the time of my coming over here in October, 1899. I think her death took place in 1905. My relations with her were of the closest character, and practically all the time we were in the same house. My relations with her were always friendly and intimate. My family were always on intimate terms with her. I knew



that Rebecca owned property. It was situated on O street, northwest, near 16th street, in the city of Washington, D. C. She acquired it, I think, in 1874. She paid, I think, \$2,000 for it. She acquired the money from my father-in-law, Robert J. Walker. The deed referred to (which was attached to the interrogatories and is the same deed which was offered in evidence at the trial and is herein-after set forth) was in my possession until October, 1899. Previous to leaving America I delivered it into the hands of my brother, S. Bayard Dod, because my brother had charge of my papers and business. I have never had possession of it since. I saw Rebecca Thompson last at the sisters on Capitol Hill, in September, 1899. Rebecca could read and write, but with so much difficulty that she rarely did either. After parting with Rebecca I had many letters from her. I have never kept any of her letters. They were always written in some one's else handwriting. It would, then, be impossible for me to give the dates of her letters, but she was in continuous correspondence with me until a few weeks before her death. The letters were of no importance, and in none of them did she ever refer to her property. Rebecca came into the family more than sixty years ago. She was given the money by my father-in-law, Robert J. Walker, by which she became free. After so many years of affectionate intercourse she was more attached to us than to any one else. Whatever money she had came to her from the Walkers."

The deposition of Alice D. Walker taken at the same time and place was then read in evidence, as follows:

"My name is Alice D. Walker. I was born January 18, 1870. I reside in Florence, Italy, with my mother, Mrs. Mary Dod Walker. Rebecca Thompson was a colored woman, lived in our family at the time of my birth and I do not remember the time that I did not know her. She continued to live with us when we moved from 5th street, northwest, in Washington, D. C. to No. 202 A street, southeast, in that city. She remained in the family until her ill health made it necessary for her to leave us, in order that she might be cared for by the Sisters. My relations with her and my family's relations with her were most intimate and affectionate and her position was more like a member of the family than a servant. I knew Rebecca owned a house on O street, northwest, near 16th street in the City of Washington, D. C., and that the money with which she purchased it had been given her by the family. I have seen the deed which accompanies these interrogatories. I first saw the deed at No. 202 A street, southeast, Washington, D. C., September 13, 1898, in the possession of Rebecca Thompson. I saw Rebecca Thompson sign and acknowledge the deed and place it in the hands of my mother. The deed remained in the hands of my mother until a few days before October 5, 1899. My mother gave the deed into the keeping of my uncle, S. Bayard Dod, and as far as I know it has never been in her possession since that time. I saw Rebecca Thompson for the last time at the colored Sisters on Capitol Hill in September, 1899. Rebecca Thompson could read and write, but with great difficulty. Rebecca Thompson did write to my mother continuously and I always read her letters. As they were of no importance, they were always destroyed as soon as they were answered. I could not give the dates of her letters, but so far

as I can recollect there was never any reference in them to her property."

The answer to the thirteenth interrogatory propounded to this witness was excluded on objection of the defendants. No objection had been taken to this answer before the deposition was offered in evidence. The interrogatory and answer read as follows:

Q. 13. "Do you know, or can you set forth, any other matter or thing, which may be of benefit or advantage to the parties at *this* issue in this case, or either of them or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at length in your answer. A. In answer to this interrogatory, I would say that even during the lifetime of her nearest relatives, her brother and his family, Rebecca used to often say that she wished my family to have her house on O street. She made a will some years ago leaving the house to my mother, for the reason that the money with which the property was purchased had been obtained from our family, but fearing there might be some trouble about that, she had that will destroyed and had the deed drawn up conveying the property to my mother."

The answer before described was then read and received in evidence. S. Bayard Dod testified on behalf of plaintiff, by deposition, as follows:

"My name is S. Bayard Dod and my residence is South Orange, New Jersey, and I am president of the First National Bank of Hoboken. I am the brother of Mrs. Mary Dod Walker, the plaintiff in this suit. She is now in Florence, Italy, where she has been for six or seven years." (Witness then identified the deed heretofore offered in evidence and hereinbefore set forth.) "The deed referred to was in my possession. When my sister left for Europe she handed me this deed with other papers to take care of for her. I retained possession of it until February, 1904, when I sent it to Rev. Mr. Clark, of Washington, D. C."

On cross-examination the witness testified that "I sent the deed to Mr. Clark immediately after Rebecca Thompson's death at my sister's request. My sister was then in Europe. I heard of Rebecca Thompson's death from Mrs. Robert J. Walker, the wife of the brother of my sister's husband. My instructions were not to place this deed on record until after Rebecca Thompson's death. During the time I held the deed, up to the time of Rebecca Thompson's death, I paid no taxes or insurance upon the property for my sister nor did I collect the rents. During that time I was partly looking after my sister's property in this country. I collected rents from a piece of property which she owns in Washington, D. C. I know nothing about the deed in question except that my sister gave it to me with the request that I would record it as soon as I heard of Rebecca Thompson's death. I never examined the deed."

J. W. Clark, for plaintiff, testified as follows:

"That he was the rector of St. James Episcopal Church, Washington, D. C. That a few days prior to February 29, 1904, the day of the recording of the deed aforesaid, as shown by the endorsement of the deed on the back thereof, he received the same from S. Bayard Dod, the brother of the plaintiff; that he, the witness, thereupon took the said deed to the office of the recorder of deeds in the District of Columbia, and there left it for record."



Defendant, Martina Irving, was called by the plaintiff and testified that she had occupied the premises as a tenant prior to 1898, and continuously since. That she paid rent to Rebecca Thompson at rate of \$18 per month during her life, and after her death paid the same to defendant Warner. On cross-examination she said she had been in possession for about twenty years. That repairs had been paid out of the rent. Never paid any rent to Mrs. Walker. Never heard Rebecca Thompson say she no longer owned the property.

Defendant Warner, called by plaintiff, testified to receipt of the rent since March 4, 1904, and that he made no claim to the premises other than as executor under the will of Rebecca Thompson.

Plaintiff then offered to read the will of Rebecca Thompson for the sole purpose of showing that all the defendants claimed under Rebecca Thompson, who was the common source of title. The defendants objected to the will being read in evidence, but conceded the claim of common source; and the will was not read.

On behalf of defendants, David Warner, one of defendants, testified as follows:

"That since 1895 at the request of Rebecca Thompson he had collected the rents, paid the taxes and the fire insurance premiums on the property in question, and had turned over the balance of the rents to her until her death. Has since collected the rents and held them as her executor. Plaintiff has never made any demands upon him for the rents and he had never collected any for her, nor paid any to her. Present tenants, the Irvings, have been in possession all the time he has had anything to do with the property. They had on several occasions prior to Rebecca Thompson's death asked him to be allowed to make repairs, and after asking Rebecca Thompson and getting her permission, he consented and payments for such repairs were deducted from the rent. Further testified that Mr. S. Bayard Dod had written to him on several occasions and requested him to forward the tax bills on certain property owned by Mrs. Walker in the southeastern section of the city, but that Mr. Dod had not on those occasions, nor at other times, requested him to get tax bills on the property in question.

Upon the conclusion of this evidence, the plaintiff moved the court to direct a verdict for her, and excepted to the refusal of the court to so direct the jury.

After charging the jury that plaintiff's right to recover depended upon the execution and delivery to her of the deed by Rebecca Thompson, and that the delivery of a deed raises a presumption that it was with intent to pass title, the court proceeded to charge the jury to the effect that the question turned upon the intent of the grantee at the time of the delivery of the deed; and that this intent might be arrived at by the consideration of the conduct of the parties after the delivery of the deed, such as the failure to record the deed, and the actual possession and receipt of the revenues of the property by the grantor during her life. And that if there was no intent to pass title at the time of the delivery of the deed, the plaintiff did not become the owner of the property. This charge will be recited hereafter. Plaintiff excepted to said charge, stating that as the question left to the jury was whether Rebecca

Thompson intended to deliver the deed as a title to the property and thereby to divest herself of the title, the only acts or conduct proper to be considered by the jury as tending to show such intent were the acts and conduct of Rebecca Thompson, and that it was error to instruct the jury that they might consider, as tending to show such intent, the acts or conduct of plaintiff after the delivery of the deed, such as her failure to record the deed, and permitting Rebecca Thompson to collect the rents, pay taxes and make repairs.

We are of the opinion that upon the evidence recited the court erred in denying the motion to direct the jury to return a verdict for the plaintiff. The evidence was direct and clear that Rebecca Thompson, with knowledge of the contents of the deed, not only affixed her signature thereto, but also acknowledged its execution to the notary public who certified to the fact in the proper manner. It was read in evidence without objection. As stated by the court in the commencement of his charge, the single question was as to the delivery of this deed.

No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery. *Simmons v. Simmons*, 78 Ala., 365, 367; *Creighton v. Roe*, 218 Ill., 619, 621. When last seen by the notary who attested it as a witness and certified to its acknowledgment it was lying on the table where the execution occurred. Alice D. Walker testified that she saw Rebecca Thompson sign and acknowledge the deed and place it in the hands of the plaintiff. The deed undoubtedly passed into the possession of the grantee and remained in her possession and that of her agents until produced at the trial. There was nothing tending to show that any fraud or imposition had been practiced upon the grantor, or that possession of the deed had been obtained by any improper means. Possession alone of a deed by the grantee is *prima facie* evidence of its delivery. *Sicard v. Davis*, 6 Pet., 124, 137; *Gaines v. Deins*, 14 Pet., 322, 326; *Stanley v. Schwalley*, 162 U. S., 255, 274. By the great weight of authority this presumption of delivery based on possession is so strong that it can only be overcome by clear and convincing proof that there had been no delivery. *McGee v. Alison*, 94 Iowa, 527, 531; *Inman v. Swearingen*, 198 Ill., 437; *McConn v. Atherton*, 106 Ill., 31; *Creighton v. Roe*, 218 Ill., 619, 621; *Simmons v. Simmons*, 78 Ala., 365, 367; *Rohr v. Alexander*, 55 Kan., 381, 384; *Cover v. Morning*, 115 Pa. St., 338, 345. This last case holds that the presumption is strengthened where the execution of the deed had been acknowledged. In *McGee v. Alison*, *supra*, it was said: "Such a rule is necessary to the security of titles. Any other would render all holdings uncertain, and would be disastrous in the extreme."

As we have seen, there was nothing in the evidence relating to the execution and delivery of the deed tending to raise the slightest inference that the grantee obtained possession through improper or illegal means. Nor was there any attempt to contradict the positive statement of the witness that it had been actually delivered by the grantor immediately after execution and acknowledgment. There was nothing inherently improbable in the circumstances surrounding, and accounting for the transaction. On the contrary,

they tended to strengthen the probability of the truth of the witness' statement. The grantor had been a favored slave of the grantee's father in law, through whose bounty she acquired her freedom and from whom she received the money of which the property in question was a result. After her freedom she had remained with the family, upon terms of friendly intimacy not uncommon in such cases. She had no children and, apparently, no near kin if any at all. Nothing was more natural, therefore, than that, towards the close of her life, she should have selected the then head of this family as the object of her bounty. But aside from this direct and positive evidence of the delivery of the deed that had been voluntarily executed and acknowledged, there was the strong presumption of delivery raised by the grantee's possession of the deed, which there was no attempt to rebut. With a *prima facie* case so made there remained nothing to be submitted to the jury.

In a case where the question was one of delivery of an instrument, it was said by Mr. Justice Story: "What is *prima facie* evidence of a fact? It is such as, in judgment of law, is sufficient to establish the fact; and, if not rebutted, remains sufficient for the purpose. The jury are bound to consider it in that light, unless they are invested with authority to disregard the rules of evidence, by which the liberty and estate of every citizen are guarded and supported. No judge would hesitate to set aside their verdict and grant a new trial, if, under such circumstances, without any rebutting evidence, they disregarded it. It would be an error on their part, which would require the remedial interposition of the court. In a legal sense, then, such *prima facie* evidence, in the absence of all controlling evidence, or discrediting circumstances, becomes conclusive of the fact—that is, it should operate upon the minds of the jury as decisive to found their verdict as to the fact. Such we understand to be the clear principles of law on this subject." *Kelly v. Jackson*, 6 Pet., 622, 632. See, also, *Crane v. Morris*, 6 Pet., 598, 620; *U. S. v. Wiggins*, 14 Pet., 334, 347; *Lilenthal's Tobacco v. U. S.*, 97 U. S., 237, 268; *Brown v. Petersen*, 25 App. D. C., 359, 363; 33 Wash. Law Rep., 310. In the case last cited, it was said: "The appellant's contention would require that every case of uncontradicted and unimpeached evidence should be submitted to a jury, where there is no countervailing testimony. But this is not the law. The law is that positive testimony uncontradicted, and not inherently improbable, is *prima facie* evidence of the fact which it seeks to establish, and the jury is not at liberty to disregard it."

With the *prima facie* case made by the possession of the deed, had that question alone been submitted to the jury, it would have been the duty of the court to set aside a verdict disregarding the same. Where the testimony is of such a conclusive character as to compel the court, in the exercise of a sound judicial discretion, to set aside a verdict returned in opposition thereto, it may be withdrawn from the consideration of the jury. *Phoenix Ins. Co. v. Dexter*, 106 U. S., 30, 32; *Conn. Mut. Ins. Co. v. Lothrop*, 111 U. S., 612, 615.

The court, in fact, instructed the jury that possession was *prima facie* evidence of delivery, and that in the absence of anything else that presumption would control. And, doubtless, but for his

view of the effect of evidence relating to the conduct of the parties after the possession of the deed had passed to plaintiff, he would have directed the jury to return a verdict for her.

This brings us to the consideration of the error assigned on the charge thereafter given which discloses that view. This instructed the jury that the question turned upon the intent with which the grantor delivered the deed to the grantee, provided they should find that it had in fact been delivered. They were further charged that in ascertaining this intent they should take into consideration the mutual conduct of the two parties afterwards. By mutual consent he said: "I meant the conduct that was adopted by both of them, and which each knew the other was adopting, and assented to. Therefore, you are entitled to take into consideration the fact that Mrs. Walker never recorded this deed during the lifetime of Mrs. Thompson; you are entitled to take into consideration the fact that Mrs. Walker permitted Mrs. Thompson to exercise dominion and ownership and to retain possession of the real estate, collect the rents, make repairs and pay taxes and the like, which tend to show that Mrs. Walker understood there was no intent to pass title at the time the deed was delivered. You can take such facts into consideration, and it is for you to decide whether in this case there are sufficient facts which tend to show that there was no intent to pass the title, and make Mrs. Walker the owner, and sufficient to overcome the presumption of fact which the law draws out of the mere fact of delivery. If you find in this case the facts are such as to prove that there was no intent on the part of Mrs. Thompson to pass the title and to make Mrs. Walker the owner at the time of the delivery of this deed, then the title did not pass by the delivery of the deed, and Mrs. Walker never became the owner, although she did have the physical possession of the deed. The burden is on the plaintiff to prove by a preponderance of the evidence that she is the owner at this time, which involves the burden on her of proving by a preponderance of the evidence that at the time of the delivery of the deed the title passed. In order that you may not be misled by that statement as to the presumption of proof, she would raise a *prima facie* case in her favor by simply proving that the deed had been delivered to her. But that rule does not settle the matter, because, as I said, you have to take into consideration the other facts in determining whether or not, weighed by all the facts of the case, that presumption ought to attach to this particular case."

This last instruction practically destroyed the benefit of the presumption arising from the possession of the deed, and was erroneous for the reasons stated in the exceptions reserved to it by the plaintiff.

¶ The intent of the parties is to be determined by what occurred at the time of the transaction. When a deed sufficient to vest a title is executed and delivered the law raises the presumption of an intent to pass the title in accordance with its terms. A deed can not be delivered to the grantee upon a condition not expressed in the instrument. *Newman v. Baker*, 10 App. D. C., 197; 25 Wash. Law Rep., 170; *Beiber v. Gans*, 24 App. D. C., 517; 33 Wash. Law Rep., 51. Moreover, there was not a circumstance in the transaction tending to show that there was any condition attached to the

delivery in this case, or that the grantor did not contemplate the necessary legal consequence of her acts. The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title, or to operate any extinguishment. *Fitzgerald v. Wynn*, 1 App. D. C., 107, 120; 21 Wash. Law Rep., 611; *Bunten v. Am. Sec. & T. Co.*, 24 App. D. C., 226, 232; 33 Wash. Law Rep., 247.

Nor can the additional fact that the grantor was permitted to remain in possession and control of the property conveyed, defeat the legal consequence of the actual delivery of the deed. *Fischer v. Union Trust Co.*, 138 Mich., 612; *McGee v. Alison*, 94 Iowa, 527, 531; *Berry v. Young*, 98 Cal., 446, 451; *Driscoll v. Driscoll*, 143 Cal., 528; *Saffold v. Horne*, 72 Miss., 470, 487; *Creighton v. Roe*, 218 Ill., 619. Such circumstances as the retention of possession and control by the grantor, coupled with failure to record the deed, if unexplained, would have weight in determining whether there had been an actual delivery, when there is evidence of circumstances tending to raise a doubt whether there was in fact a delivery of the deed, or whether it had come properly into the possession of the grantee at the time or subsequently. As we have seen, it is not permissible to show that the delivery was upon a condition not expressed in its terms, or in some contemporaneous instrument intended to operate therewith; and for a stronger reason the subsequent conduct of the parties can not be made the ground of inference as to the intent of the parties at the time of actual delivery, in order to rebut the presumption arising from the execution and acknowledgment of the grantor and possession by the grantee.

There was no evidence in this case tending to show any circumstances from which it could be inferred that there was any other intention of the parties at the time than that manifested by the acts of execution, acknowledgment, and delivery of the deed. Moreover, it would seem that the conduct of the grantee in permitting the grantor to receive the entire benefit of the property during her life may be reasonably accounted for without raising a necessary suspicion in regard to the manner in which she came into possession of the deed. Grantor's home with the grantee had been broken up, and it was natural that the latter should have permitted her to enjoy the revenues of the property for maintenance during her remaining years. In view of the relations of the parties, and the fact that the conveyance was a gift founded on affection and a sense of gratitude for past bounty and kindness, it would have been cruel and unnatural to withhold from the grantor the income of the property while she continued to live and to have need therefor.

In the view that we have taken of this case the answer of the witness Alice D. Walker to the thirteenth interrogatory is unimportant and has not been considered.

If there had been any evidence tending to raise a question as to the execution and delivery of the deed which would warrant the consideration of the evidence relating to the retention of possession by the grantor and the failure to record the deed until after her death, then the concluding statement as to the making of a will by the grantor

and its destruction and the substitution of the deed would constitute a material circumstance tending to support the fact of delivery of that deed and thereby become admissible.

It is proper to remark that general interrogatories like the one in question are improper as they do not inform the opposing party of the answer that might be expected so as to enable a cross-examination to be had thereon. Such defects, however, go to the form of the deposition and should be called attention to by motion to exclude or suppress the answer, in advance of the trial, so that the party relying upon the answer could have an opportunity to remedy the defect, if desired, by retaking the deposition on that point before entering upon the trial.

For the reasons given the judgment will be reversed with costs and the cause remanded for a new trial.

Reversed.

ROSA WALLACH ET AL., APPELLANTS,

v.

HENRY B. F. MACFARLAND ET AL.

No. 1815. Decided March 31, 1908.

APPEAL from a judgment of the Supreme Court of the District of Columbia, holding a District Court, No. 556, confirming an assessment of benefits in a condemnation proceeding. Affirmed.

Mr. SAMUEL MADDOX and Mr. H. P. GATLEY for the appellants.

Mr. E. H. THOMAS and Mr. J. F. SMITH for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from the judgment confirming the award of the jury assessing benefits to adjacent lands through the extension of Eleventh street. As the appeal is from the same judgment appealed from by other parties at interest, namely, Columbia Heights Realty Co., in appeal numbered 1833, the two were heard together.

The first assignment of error is thus stated: "In overruling the exceptions of appellants and confirming the verdict."

The proposition submitted on the argument on this too general and indefinite assignment, is that the assignment of benefits against lot 9 in block 17 is excessive. There is nothing in the brief bill of exceptions by which this question can be determined. None of the evidence on which the assessment was founded is before us, and we can not undertake its determination by an inspection of the map showing the line of the street and the size and shape of the adjacent lots, which is copied in the record.

2. The second and third assignments relate to the procedure under the act of June 6, 1900, instead of the act of March 3, 1899, and to the plea of limitations. The questions raised have been considered and determined adversely to the appellants in appeal No. 1833. As the conditions of the two cases in respect of these questions are the same in both cases it is only necessary to refer to the opinion filed in No. 1833 for the conclusion that neither contention is tenable.

3. The fourth assignment of error is that the

court erred: "In declining to permit appellants to show the prices paid for so much of their land as was taken for the extension of Eleventh street." The very brief bill of exceptions set out in the record does not recite any of the evidence heard by the jury. It recites merely that the appellants offered in evidence "so much of the verdict of the former jury as affects their lots, and shows the prices paid for lands taken, and the assessments as for benefits against lands not taken." This was objected to by the appellees unless the entire verdict is offered. Counsel for other claimants objected to reading any part of the former verdict. Thereupon the chairman of the jury declined to hear any part of the former verdict, on the ground that under the instructions of the court they were not allowed to consider any part of the former verdict except such as relates to grade damages. This ruling was certified to the court which sustained the ruling of the chairman, and the appellants excepted.

It is to be observed that the particular parts of the verdict which it was desired to read are not shown in the bill of exceptions; nor was any purpose stated for which it was offered. It is now contended that the verdict ascertaining the value of the land of appellants actually taken having been confirmed, was the best evidence by which the values of the remaining lands, adjacent thereto, at the time of the first condemnation proceedings, could be estimated. Assuming that the evidence was competent for that particular purpose, we can not, in the absence of any statement of what the general evidence heard by the jury was, determine whether the error was a material, or an immaterial one. The question in the case was the benefit received by reason of the street extension, and not the value of the lands actually taken, and for which payment had been made in accordance with the former award. It could only serve the purpose of proving a value at the time, by which the then value of the adjacent lands might be estimated; and for aught that appears, the same values may have been proved by appellants' witnesses. While the Commissioners were concluded by the former finding of values, and compelled to make payments in accordance therewith, it does not follow that they were estopped thereby in arriving at the amount of the benefits accruing to the lands not taken. It appears also that the offer of the verdict of the former jury extended to their findings of benefits to the lands not taken as well as to the damages assessed for the lands that were taken. As the former and vacated assessment of benefits was clearly incompetent evidence, the appellants should not have insisted upon both in the same offer. As part was incompetent evidence it was not error to exclude the whole when offered as such.

4. The fifth assignment of error relates to the giving of an instruction to the jury, at the request of the appellees, relating to the elements to be considered in assessing benefits, and to the refusal of certain instructions asked by the appellants. The following is the instruction excepted to:

"It is the duty of the jury to consider and assess the benefits which have resulted to the pieces or parcels of land on each side of Eleventh street northwest, as extended from Florida avenue to Lydecker avenue, and the benefits which have resulted to any and all other pieces or parcels

of land from the said extension; and in determining the amounts to be so assessed against said pieces or parcels of land, the jury shall take into consideration the respective situations of the said pieces or parcels of land, and the benefits that they have severally received from the extension of said Eleventh street. By extension of the street the jury are to understand its establishment, laying out, and completion for all the ordinary uses of a public thoroughfare or highway."

This is the same instruction that was considered in No. 1833, as the cases of all property owners were heard together in the one proceeding. The refused instructions, numbered 1, 4, and 5, are identical with those numbered 1, 2, and 3 in No. 1833 as offered on behalf of appellants in that case and refused.

Strange to say, the additional instructions 1, 2, 3 and 4 shown by the record in 1833 to have been given by the court following the one that was excepted to are not shown in the record in the present appeal. As was held in No. 1833, however, we do not think that there was error in giving the instructions noted as excepted to without regard to the absence of the additional instructions which, as was held in that case also, covered every proposition contained in the refused instructions.

It does not appear in the record that there was any evidence whatever tending to show anything more than that the street had been opened and graded as contemplated at the time the original proceeding was begun. It does not appear, therefore, that there was any evidence tending to show any facts to which the refused instructions might have been applicable.

5. The second and third special instructions that were refused relate to the facts shown in the former verdict as to the assessed value of the lands therein. As we have held that there was no error in excluding that verdict from the jury it follows that instructions applicable thereto were properly refused.

For the reasons given the judgment confirming the verdict as to the appellants will be affirmed with costs.

Affirmed.

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Master and Servant—Care Required Toward Servant.—An electric illuminating company is not an insurer of the safety of an electrician in its employ. *Guest v. Edison Illuminating Co.* (Mich.), 114 N. W. Rep., 226.

Election of Remedies — Claimant May Not Rescind After Proof of Claim in Bankruptcy.—Where within four months of the voluntary adjudication of a banking firm, claimant deposited with it a check, receiving a small amount in cash and the bank's certificate of deposit for the residue, it is held, *In re Kenyon*, 19 Am. B. R., 194, that his knowledge of the bank's insolvency on the date of adjudication required him to elect promptly to either rescind his contract with the bank and seek recovery of his money, or to affirm the transaction with the bank by making proof of his claim; but having twice elected to affirm by twice filing and proving his claim and retaining the certificate of deposit and making no offer to surrender it, he is bound by his election thereby in the absence of inadvertence, fraud, or mistake.

**Court of Appeals of the District of Columbia.****JOANNA FRENCH, BY HER NEXT FRIEND,  
APPELLANT,****v.****NATIONAL LAUNDRY COMPANY.****PERSONAL INJURIES; DIRECTING VERDICT.**

In an action by a minor to recover for personal injuries received while in the employ of defendant, where the plaintiff was the first witness in her own behalf, and at the close of her cross-examination the trial court, of his own motion and without allowing plaintiff to produce further testimony, directed the jury to return a verdict for the defendant, this action was held error and the judgment reversed.

No. 1812. Decided March 31, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. —, entered upon a verdict directed by the court in an action for personal injuries. Reversed.

Mr. W. W. MILLAN and Mr. R. E. L. SMITH for the appellant.

Mr. H. P. GATLEY and Mr. BARRY MOHUN for the appellee.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

The appellant, plaintiff below, brought suit in the Supreme Court of the District of Columbia to recover damages from the appellee, defendant below, for injuries received while in the employ of the defendant company. It appears that the plaintiff, at the time of the accident, was 13 years of age. She was employed by the defendant to assist in the operation of a machine in its laundry known as a mangle. The machine consists of large rolls, through which clothing and laundry goods are passed. An operator feeds the goods into the rolls at the front of the machine, and another operator receives them as they pass from the rolls. The plaintiff was assigned to the latter work. When the machine was stopped on the evening of the 11th of May, 1906, some unfinished napkins were left in the mangle, stuck to the rollers and the cylinder. The first thing plaintiff did on reaching the laundry on the following morning was to roll a canvas that was passed through the mangle to prevent the scorching of the rollers. When the canvas was taken out the napkins still remained attached to the rolls. In removing the napkins from the rolls, while the machine was in operation, plaintiff's hand was caught and the injury here complained of sustained. It further appears that when she arrived the defendant's assistant forewoman instructed her to go to work and get the mangle in order, and she proceeded to roll the canvas and remove the napkins from the rolls. Plaintiff testified that she had seen others remove napkins while the machine was in motion, but could not remember who. She was employed in defendant's laundry by defendant's forewoman without any inquiry having been made of her as to her experience. Plaintiff testified that she was not informed by the defendant company or its agents that the machine was dangerous, nor was she cautioned in any way as to the danger attached to removing articles from the machine while it was in motion. She testified that she had worked in other laundries

in the city for several months before going into the employ of defendant, and that at the time of the accident she had been working on the machine in question for about three months.

The plaintiff was the first witness examined in her own behalf. When the cross-examination was concluded and she was dismissed from the witness stand, the court, on its own motion, instructed the jury to return a verdict for the defendant.

The chief question before us is, whether or not the trial court erred in thus summarily disposing of the case? We are clearly of the opinion that this was error. The rule to be applied to the action of the court in this case is absolute, and will admit of no exception. The strict rule applied where the court peremptorily instructs a verdict, either when plaintiff rests its case in chief, or when all the evidence, both of plaintiff and of defendant, has been submitted, has no application here. Plaintiff had not rested her case. The record is silent as to whether or not she had further evidence to offer. The fact remains that she had not rested, and, until she did, she had the manifest right to offer additional evidence in support of her declaration. The action of the court, in instructing the jury to return a verdict for the defendant, under the circumstances here disclosed, would constitute error in any case. Plaintiff was not bound to establish her case by her own evidence, or by a particular number of witnesses. The record discloses that others were present when the accident occurred, and it is fair to presume that plaintiff had other witnesses to offer in support of her declaration. The testimony of the persons present, it is reasonable to assume, would have thrown much light upon the case. Every presumption must be resolved against the court, when it assumes to deprive a litigant of the right to produce competent witnesses in support of a declaration, which, if proved, would justify a recovery.

It is unnecessary for us to consider in detail the question of negligence, except to suggest that we are clearly of the opinion that, on the evidence of plaintiff as disclosed by the record, sufficient issue was raised to warrant the submission of the case to the jury. On this evidence alone, the trial court committed reversible error in instructing the jury to return a verdict for the defendant.

The judgment is reversed with costs, and the court is directed to grant the plaintiff a new trial. Reversed.

Preference—Mortgage by Firm to Partner.—In the case of *In re W. J. Floyd & Co.*, 19 Am. B. R., 438, it has been held that a partnership mortgage given within the four months period and while the partnership was insolvent, to secure the individual debt of a member of the firm, constitutes a voidable preference, upon the adjudication in bankruptcy of the partnership.

Trustee—Removal for Misconduct—Allowance for Expenses, Etc.—In the case of *In re Leverton*, 19 Am. B. R., 434, it has been held that a trustee in bankruptcy removed by the court for due cause will be denied his personal expenses and commissions, and also the expenses of an accountant who solicited claims for his attorney, by which the election of the trustee was controlled and the accountant chosen.

**Debts—Priority—Wage Claim—Application of Payments.**—In the case of *In re Andrews*, 19 Am. B. R., 441, it appeared that about a month before his adjudication, a bankrupt who had been insolvent for four or five years and was operating a chain of stores in four States, paid a debt of \$1,000 to the manager of several of the stores, who had no knowledge of the bankrupt's insolvent condition. For the eight months prior to the bankruptcy, the manager's wages were \$455, on which he had received \$305.22, of which latter amount \$137 had been paid within the three months period with no understanding as to what debt it should be applied. It was held that the manager had a right to apply said amount to wages due before the three months period, and was entitled to priority in the payment of the balance of his claim.

**Master and Servant—Negligence of Train Dispatcher.**—The train dispatcher held not negligent in not giving a passenger train notice of the work order under which the engine of a wrecked train was running. *Veit v. Ann Arbor R. Co.* (Mich.), 114 N. W. Rep., 233.

**Master and Servant—Contributory Negligence.**—A railroad company held not liable for the death of a car repairer who had not put up a flag or otherwise given notice that he was working on a car, or taken any precaution to keep a lookout for cars or engines. *Elgin, J. & E. Ry. Co. v. Herath* (Ill.), 82 N. E. Rep., 610.

**Master and Servant—Contributory Negligence.**—A servant who was injured while endeavoring to tie a belt over a revolving shaft in an improper manner, without asking instructions of his superior, as he had been directed to do, held not to have exercised due care, precluding recovery. *O'Brien v. Hargraves Mills* (Mass.), 82 N. E. Rep., 677.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### FIRST INSERTION.

**Perri W. Frisby, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *Sinah E. Pearson*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of April, 1908. **MARION E. LEWIS**, 1150 22d St. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,204. Administration. [Seal.] 17-3t

#### Legal Notices.

**M. N. Richardson, Attorney**  
In the Supreme Court of the District of Columbia.  
**J. Henry Wurdeman, Trading as Wurdeman & Co.,**  
Plaintiff, v. **Elizabeth Patterson, Defendant.**

At Law, No. 60,347.  
The object of this suit is to recover the sum of eight hundred and sixty dollars and twenty-ninety cents (\$860.29), with interest and costs of suit from the defendant *Elizabeth P. Patterson*, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 22d day of April, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington [Seal] Law Reporter and The Evening Star Newspaper before said day. By the Court: **WRIGHT, Justice.** A true copy. Test: **J. R. Young, Clerk,** by **F. W. Smith, Asst. Clerk.** 17-3t

**E. L. Gies, Attorney**  
In the Supreme Court of the District of Columbia.  
**Theodore Michael, Plaintiff,** v. **George J. Michelsbacher alias George Kohler, Defendant.**

At Law, No. 50,186.  
The object of this suit is to recover from the defendant the sum of four hundred and forty-six and 80/100 dollars (\$446.80) with interest from the 24th day of July, 1903, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 22d day of April, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Times before said day. By the Court: **WRIGHT, Justice.** A true copy. Test: **J. R. Young, Clerk,** by **F. W. Smith, Asst. Clerk.** 17-3t

**John B. Lerner, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of *Herman Jacobson*, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 11th day of May, 1908, at 10 o'clock, A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 22d day of April, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, by **Fred'k Eichelberger**, Trust Officer; **John B. Lerner, Attorney.** Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,812. Administration. [Seal.] 17-3t

**A. E. McLaughlin, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of *Florence A. McComas*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of April, 1908. **AARON E. McLAUGHLIN**, 329 Bond Building. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,935. Administration. [Seal.] 17-3t

**Legal Notices.****Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of William Jones Rhees, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 11th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons are entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched. Given under my hand this 17th day of April, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,862. Administration. [Seal.] 17-3t

**Lester & Price, Attorneys**

In the Supreme Court of the District of Columbia.  
George Schwakopf, Executor of the Estate of Mary Schwakopf, Deceased, Plaintiff, v. Charles B. Meyd and Eleanor B. Meyd, Defendants.

At Law, No. 50,376.

The object of this suit is to recover the sum of \$650, with interest from the 29th day of February, 1908, and to have judgment of condemnation of certain property of the defendant, Eleanor B. Meyd, levied on under an attachment issued in this suit to satisfy the plaintiff's claim, it is, therefore, this 21st day of April, 1908, ordered that the defendants appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. A copy of this to be published in The Washington Law Reporter

[Seal] once a week for three successive weeks. By the Court: WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 17-3t

**F. Edward Mitchell, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Samuel Allen Sawtell, Deceased.  
No. 14,808. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Andrew Nolte, it is ordered this 21st day of April, A. D. 1908, that Theodore George Sawtell, and all others concerned, appear in said court on Monday, the 25th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 17-3t

**William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of William K. Deeble, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 11th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 21st day of April, 1908. AMERICAN SECURITY AND TRUST COMPANY, and CORA B. DEEBLE, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,410. Administration. [Seal.] 17-3t

**Legal Notices.****Michael J. Keane, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Patrick Walsh, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1908. PATRICK J. DRURY, 210 10th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,197. Administration. [Seal.] 17-3t

**R. Preston Shealey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Murphy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1908. CHAS. W. FLOECKHER, 54 H st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,186. Administration. [Seal.] 17-3t

**Leigh Robinson, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Emma Barr, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1908. RANDOLPH H. MCKIM, 1623 K st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,883. Administration. [Seal.] 17-3t

**Sloman & Lerch, Attorneys****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Minna Wright, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of April, 1908. MARY WRIGHT GILL, Forest Glen, Md.; E. QUINCY SMITH, Union Savings Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,094. Administration. [Seal.] 17-3t

**Chas. T. Hendler, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of William K. Verlander, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of April, 1908. PHENIE VERLANDER, 412 12th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,198. Administration. [Seal.] 17-3t

Justice blanks of every description for sale at this office.



**Legal Notices.**

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ebenezer Ellis, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **AMERICAN SECURITY AND TRUST COMPANY, James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,715. Administration. [Seal.]** 17-3t

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William P. Robinson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of December, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **AMERICAN SECURITY AND TRUST COMPANY, James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,869. Administration. [Seal.]** 17-3t

**C. Clinton James, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John H. Mitchell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **IDA M. MITCHELL, 685 8th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,084. Administration. [Seal.]** 17-3t

**Richard A. Ford, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Nixon Brewer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 17th day of April, A. D., 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **J. HAMMOND BREWER, 209 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,208. Administration. [Seal.]** 17-3t

**Michael J. Colbert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice that the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William E. Duhey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with vouchers thereof, legally authenticated, to the subscriber, on or before the 17th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **JAMES F. DUHEY, 519 B st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,202. Administration. [Seal.]** 17-3t

**Legal Notices.**

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, which was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of David L. Foster, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 11th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons are entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized with their claims against the estate properly vouched. Given under my hand this 17th day of April, 1908. **NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,296. Administration. [Seal.]** 17-3t

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maria C. Peet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of April, 1908. **NATIONAL SAVINGS AND TRUST COMPANY, George Hoover, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,144. Administration. [Seal.]** 17-3t

**J. H. Lichtliter, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Linus T. Squire, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of April, 1908. **SUSANNAH J. SQUIRE, 1738 N. Capitol st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,883. Administration. [Seal.]** 17-3t

**SECOND INSERTION.**

**John B. Larnar, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Persis A. Cleaveland, Deceased.**  
**No. 15,178. Administration Docket 38.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by The Washington Loan and Trust Company, the executor therein named, it is ordered this 17th day of April, A. D. 1908, that Emma Atkins Churchill, Persis Atkins Livesley, Frank Rufus Atkins, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. **HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 16-3t

This office and store opens at eight o'clock in the morning and closes at six, but the workshop closes at five o'clock, and all work wanted after that hour must be paid for at more than day rates. We call your attention to this that there may be no misunderstanding. The Law Reporter Printing Company, 518 Fifth Street, N. W.

**Legal Notices.**

R. P. Shealey, Solicitor  
In the Supreme Court of the District of Columbia.  
Agnes B. Cudmore et al. v. John J. Cudmore et al.  
No. 27,281. Equity Docket No. 80.

The object of this suit is to obtain the sale of lot 142, square 619, improved by premises No. 1208 North Capitol street, in the city of Washington, District of Columbia, for the purpose of administering and partitioning the estate of Charles E. Cudmore, deceased. On motion of the plaintiffs, it is, this 14th day of April, A. D. 1908, ordered that the defendants, John J. Cudmore and Michael T. Cudmore, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

The Washington Herald before said day.  
[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 16-8t

J. D. Leonard and W. L. Ford, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

Estate of Henry Haight, Deceased.  
No. 15,174. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Amanda J. Haight, it is ordered this 14th day of April, A. D. 1908, that Helen Haight, infant, and all others concerned, appear in said court on Wednesday, the 20th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days

[Seal] before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 16-8t

W. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Charles E. Wood, Deceased.  
No. 15,162. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by American Security and Trust Company, it is ordered this 18th day of April, A. D. 1908, that Mary Van de Boe, Pearl Wood, Imogene Michael, Lillian D. Moon, Hattie Barbee, Ada C. Shane, Jessie Wood, Edric Wood, William E. Harmon, Clifford B. Harmon, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-8t

C. H. Cragin, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Allen Dodge, Deceased.  
No. 15,179. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles H. Cragin, the executor named in said will, it is ordered this 15th day of April, A. D. 1908, that William M. C. Dodge, Francis H. Dodge, Sarah Esther Freeman, Henry Henley Dodge, Donald D. Dodge, Francis T. Dodge, Bessie D. Chester, Annah H. D. Cooke, Kate D. Augur, Emily J. Dodge, Neenah D. Townsend, William Dodge, Jr., Mary Mason Wynkoop, Richard Mason Dodge, Benjamin P. Poore Mosely, Anne W. D. Boggs, Emily Dodge, Elizabeth C. Dodge, and Eben G. Dodge, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star, once a week for three successive weeks before the return day herein mentioned, the first publication to

[Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-8t

**Legal Notices.**

J. H. Taylor, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
Estate of Mary J. Nourse, Deceased.  
No. 15,159. Admin.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James B. Nourse and Richard Douglass Simms, executors in said will named, it is ordered this 15th day of April, 1908, that Charles N. Simms, of Charleston, West Virginia; Rosa D. Chew Williams, of Baltimore, Maryland; Jannett B. Chew Clagett, of Frederick County, Maryland; Constance Nourse, Mary P. Nourse, Charlotte St. G. Nourse, Walter P. Nourse, and Annie C. Nourse, of Fauquier County, Virginia; Charles J. Nourse, Jr., 3d, Julia Nourse, Jr., and Julia L. Nourse, of New York City, State of New York, and all others concerned, appear in said court on Monday, the 18th day of May, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 16-8t

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William J. Sibley, Deceased.  
No. 7742. Administration Docket 28.

Application having been made herein for probate of the last will and testament of said deceased, as to real estate on said estate, by the Washington Loan and Trust Company, the executor in said will named, it is ordered this 17th day of April, A. D. 1908, that the unknown heirs at law and next of kin of Israel H. Sibley, Albert G. Sibley, and Richard Thomas Jones, Cecilia Ann Hoyer, nee Benson, Julia Sibley, and William Sibley, and all others concerned, appear in said court on Monday, the 18th day of May, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 16-8t

Worthington, Heald & Frailey, Solicitors

In the Supreme Court of the District of Columbia.  
The Board of Foreign Missions of the Presbyterian Church in the United States of America, a Body Corporate, et al., Complainants, v. Louisa M. Breckenridge et al., Defendants. Equity No. 25,847.

The object of this suit is to obtain a decree adjudging that the title to the following described real estate in the District of Columbia was acquired and held by Caroline M. Noble, during her lifetime, as trustee for the estate of Jonathan H. Noble, deceased, and not in her own right, and for the sale of said property by trustees appointed by the court, and a distribution of the proceeds in accordance with the will of Jonathan H. Noble. Said real estate is described as follows: Lot lettered "A" in the subdivision of lots numbered 64, 65, 66, and 67 in Wright and Cox's subdivision of part of Pleasant Plains, in the county of Washington, as recorded in liber levy court No. 2, folio 25, of the records of the office of the surveyor of the District of Columbia; also the east 15 feet front of original lot 14, in square 1058, by the full depth thereof; also lots 59, 60, 61, in square 1018, as recorded in book 19, page 62, of the records of said surveyor's office, the last four described parcels being situated in the city of Washington. Upon motion of the complainants it is this 15th day of April, 1908, ordered that the defendant, Arvilla Maude Wilcox Kilder, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this notice be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] ASHLEY M. GOULD, Justice. A true copy. John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 16-8t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - MAY 8, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Checks; Fraudulent Indorsement.

In *Central National Bank v. National Metropolitan Bank*, the appeal was from a judgment for defendant in an action to recover the amount of a check indorsed by the latter. It appeared that the check was for the amount of a loan made by one Lester to a woman who falsely represented herself to be Mrs. A. E. McKnight. It was drawn on the plaintiff bank, to the order of Mrs. A. E. McKnight, and was paid by the Washington Loan and Trust Company, the payee being identified as Mrs. McKnight by one Marshall, who at her request had gone with her from Lester's office to the trust company. The trust company indorsed the check to the defendant bank, and that bank indorsed it and it was paid to defendant through the clearing house. The indorsements by the trust company and the defendant bank were each followed by the words: "Prior indorsements guaranteed." The plaintiff first charged the check against Lester's account, but later, when the fraud was discovered, repaid him the amount, and demanded payment from defendant. The trial court directed a verdict for defendant, and its judgment is affirmed by the Court of Appeals in an opinion by Mr. Chief Justice Shepard.

#### Mechanics' Liens; Improvements by Lessee.

In *Langley v. D'Audigne*, the appeal was from a decree of the court below dismissing a bill to enforce mechanics' liens. It appeared that the claims

for which liens were filed were for work done under contracts with a lessee of defendant. The lease was for five years, and by its terms the lessee was allowed to make improvements to the extent of \$5,000, the said amount to be deducted from the stipulated rent at the rate of \$1,000 yearly. The lessee became insolvent and went out of business during the first year of the lease, after having contracted with complainants for extensive improvements. The trial court denied the right of complainants to a lien, and its decree is affirmed by the Court of Appeals in an opinion by Mr. Chief Justice Shepard.

#### Attachment on Judgment; Administration.

In *Miller-Shoemaker Real Estate Co. v. Sturgeon*, the appeal was from an order overruling a motion for judgment of condemnation against the garnishee, an administrator, in attachment on judgment. The garnishee as administrator of his wife, who was killed in a railroad accident, settled a claim for the damages, receiving \$3,800. Plaintiff recovered judgment against him for an individual debt, and caused an attachment to be issued against him as administrator, to which he made answer denying that he had anything in his possession as administrator due to himself individually; and he testified that on receipt of the money paid in settlement by the railroad company he had paid it over to himself individually as sole beneficiary of his wife, and used the money to pay personal debts. The Court of Appeals affirms the judgment in an opinion by Mr. Justice Van Orsdel.

#### Carriers; Personal Injuries; Defective Equipment.

In *Blatcher v. P. B. & W. Railroad Co.* the appeal was from a judgment for defendant in an action for personal injuries. Plaintiff hired from defendant a car to transport cattle from Washington to Newport, R. I., the latter point being beyond the terminus of defendant's road, and went with the car to care for the cattle. The train stopped at a point beyond defendant's line, and plaintiff left the car to water the cattle. In attempting to reenter he grasped a hasp on the car door, which, being defective, gave way, and he was injured. The Court of Appeals, in an opinion by Mr. Justice Robb (Mr. Justice Van Orsdel dissenting), reverses the judgment.

#### Master and Servant; Safe Place to Work.

In *Standard Oil Company v. Brown* the appeal was from a judgment of the court below in an action for personal injuries. It appeared the plaintiff was employed by defendant company as a tank wagon driver, and it was his duty to drive the wagon during the day and at the close of the day

to place the horses in the stable. Another employee was charged with the duty of feeding and bedding the horses, and plaintiff was injured by being struck with a bale of straw dropped down by such employee from the stable loft through an opening in the floor. Plaintiff had been in defendant's employ only a short time, and had not been informed of the dangerous use made of the opening in the floor of the loft. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, affirms the judgment of the trial court in favor of the plaintiff.

**Wills; Finding on Issue of Mental Capacity Sufficient to Support Judgment.**

In *Macafee v. Higgins* the appeal was from a judgment of the Probate Court denying probate of an alleged will. The jury in the trial court returned a verdict against the will on the three issues of mental capacity, fraud, and undue influence. The Court of Appeals, in an opinion by Mr. Justice Robb, affirms the judgment, holding that no error was committed by the trial court in respect of the issue as to the mental capacity of the deceased, and that the finding of the jury on that issue against the will was sufficient to support the judgment appealed from.

**Metropolitan Police; Time of Service; Advanced Enrolment.**

In *Macfarland et al. v. United States ex rel. Russell*, the appeal was from a judgment of the court below granting a writ of mandamus to compel the enrolment of relator as a private in class 2 of the Metropolitan Police Force as of July 1, 1906. The claim of relator was made under the act of June 8, 1906, providing that privates serving for more than three years shall be promoted to class 2, which entitled them to increased salary. It appeared that relator had served as desk sergeant for a short time and was then reduced in rank, and subsequently was promoted and made a bicycle officer, which promotion occurred July 1, 1905; and it was contended by the respondents that each change was a new appointment, and that the three years necessary for his promotion did not begin to run until July 1, 1905. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirming the court below, holds that there was only one appointment, that made when relator entered the service, and that the three years began at that time.

**Board of Education; Power to Dismiss Teachers.**

In *United States ex rel. Nalle v. Hoover et al.*, the appeal was from an order of the court below denying a petition for a writ of mandamus to compel the board of education of this District to reinstate the relator as a teacher in the public schools. It was claimed by the relator that her

dismissal was illegal for the reason that no trial by the board on specific charges against her had been had, as provided by section 10 of the act creating the board of education; but the Court of Appeals, in an opinion by Mr. Justice Van Orsdel, affirming the court below, holds that the board has power to inquire into the professional qualifications of a teacher, and upon finding her deficient in this regard to dismiss her, without according her the hearing provided in that section, which relates to another and distinct matter.

**Real Estate Agent; Right to Commission Denied.**

In *Harten v. Loffer* the appeal was from a judgment for the plaintiffs in a suit to recover for services in obtaining a purchaser for real estate. It appeared that plaintiffs had approached defendant with respect to the purchase of the latter's property at the instance of a party who desired to make the purchase; and the Court of Appeals holds, in an opinion by Mr. Chief Justice Shepard, that this made them the agents of the purchaser, and this agency not having been disclosed to the defendant, they were not entitled to recover commission from him.

**Contract; Partnership; Set Calendar; Continuances.**

In *Smith v. Ross* the appeal was from a judgment for the plaintiff in an action to recover for materials furnished to the defendant and others in the construction of certain houses. The case was, on February 2, 1902, placed on the set calendar, but subsequently was taken therefrom and placed on the assignment for trial. Various continuances were had over defendant's objection, but no exception was taken, and the Court of Appeals refused to consider the assignment of error based thereon. The defendant also assigned as error the refusal of certain prayers for instruction. The judgment is affirmed in an opinion by Mr. Justice Van Orsdel.

**Veterinary Medicine; Act Regulating Practice Sustained.**

In *District of Columbia v. Dewalt*, the defendant was arrested charged with practicing veterinary medicine in violation of the provisions of the act of February 1, 1907, regulating such practice in this District. The information was dismissed by the Police Court. The Court of Appeals, in an opinion by Mr. Justice Robb, upholds the validity of the act of Congress referred to and reverses the judgment.

**Mandamus; Indian Tribes; Cancellation of Enrolment Obtained by Fraud.**

In *Garfield v. U. S. ex rel. Turner*, the appeal was from an order granting a writ of mandamus to compel the respondent to restore relators to the rolls of citizenship of the Creek Nation. The answer of the

respondent alleged upon information and belief that the enrolment had been obtained by fraud, setting up in detail the facts upon which the allegation of fraud was based; and a demurrer to the answer was sustained. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, holds that the allegation of fraud was admitted by the demurrer, and reverses the judgment.

**Mandamus; Public Lands; Inadvertent Issue of Patent.**

In *Garfield v. U. S. ex rel. Cartford*, the appeal was from a judgment of the court below granting a writ of mandamus to compel the respondent to deliver to the relator a patent for 160 acres of land. The return set up that the entry of relator was illegal for the reason that the land was unsurveyed; that by mistake or inadvertence the patent was executed and recorded, but the same was withheld from relator for want of authority in respondent to grant it. A demurrer to the return was sustained. The Court of Appeals reverses the judgment in an opinion by Mr. Chief Justice Shepard.

**Libel; Evidence; Damages; Privilege.**

In *Russell v. Washington Post Company*, the appeal was from a judgment in an action for an alleged libel. The Court of Appeals, in an opinion by Mr. Justice Robb, reverses the judgment, holding that the trial court erred in the exclusion of certain evidence offered by plaintiff; also in excluding from the jury the question of plaintiff's right to recover exemplary damages. It is also held that the defense of privilege was not applicable to the article published by defendant.

**Patent Appeals Decided.**

No. 472, *Kinsman v. Knitner*, affirmed; No. 476, *Cutter v. Leonard*, affirmed; No. 479, *American Stove Co. v. Detroit Stove Works*, affirmed; No. 480, *Barstow Stove Co. v. Detroit Stove Works*, affirmed. Opinions by Mr. Justice Robb. No. 466, *Gohlman v. Hobart*, affirmed. Opinion by Mr. Justice Van Orsdel.

**Exemptions—Pennsylvania—Fraudulent Concealment of Assets.**—Where a merchant in a country town of about one thousand inhabitants has a stock of goods of \$5,000 in value, and within the three months immediately preceding his adjudication as a bankrupt buys \$11,000 worth of goods in addition, which he does not pay for, and his whole stock at cost price is appraised at less than \$3,500, and he has no proper books of accounts and can not account for more than \$3,000 during said period of three months, and the conclusion to be drawn from the testimony is that he has made away either with the goods or their proceeds, which he withholds and conceals from his creditors, it is held, In *re Leverton*, 19 Am. B. R. 426, that he will be refused his \$300 State exemption because of a fraudulent concealment of assets.

## Court of Appeals of the District of Columbia.

LEANDER SCOTT ET AL., APPELLANTS,

v.

HENRY A. HERRELL ET AL.

**EJECTMENT; ADVERSE POSSESSION; OUTSTANDING TITLE IN STRANGER; EVIDENCE; WILLS; PROOF OF EXECUTION.**

1. The plaintiff in ejectment may be defeated by proof of an outstanding title by adverse possession in another person who is a stranger to the suit, and between whom and the defendant there is no priority.
2. The admission in evidence of tax deeds dated subsequent to the time the party under whom defendants claim acquired title by adverse possession held not error.
3. A lease by a party in adverse possession of land held admissible in evidence as tending to show claim of title by the lessor.
4. A receipt for rent signed by a party shown to have been the agent of the adverse claimant, although not in terms referring to the lots in controversy, held admissible in evidence, in connection with other evidence tending to show that the party to whom it was given was in occupation of said lots and paid rent therefor; and the objection that the paper was not the original receipt but a copy comes too late when not made when the evidence was offered.
5. Proof of the execution of a will by one of the subscribing witnesses thereto, one of the others being dead, and the third a nonresident, held sufficient.

No. 178. Decided March 31, 1908.

APPEAL by plaintiffs from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,887, entered upon a verdict for defendants in an action of ejectment. Affirmed.

Mr. JOHN E. ROLLER and Mr. MILTON STRASBURGER for the appellants.

Mr. W. MOSBY WILLIAMS and Mr. IRVING WILLIAMSON for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

In this action of ejectment, brought by appellants, Leander and William L. Scott seek to recover each an undivided one-third interest for life, and Julian F. and Corinne L. Scott together an undivided one-third interest in fee simple in lots 7 and 8 in square 1107 in this city.

The suit was instituted against Henry A. Herrell and John F. O'Neill, trading as H. A. Herrell & Co., they having been in possession of the lots, but subsequently the Capital Syndicate Company was made defendant as to lot 7.

At the trial the plaintiffs to prove their title first introduced the original records of the War Department, showing that said lots "in the division between the original proprietor and the United States, were allotted to Abraham Young," the plaintiffs' predecessor in title.

The defendants under their plea to the general issue introduced evidence tending to prove title in Frances H. Ball by adverse possession. The first evidence offered was a deed from Charles H. Ball et ux. and John T. Ball to said Frances H. Ball, dated February 25, 1868, duly recorded, purporting to convey said lots in fee, and which plaintiffs conceded constituted color of title. There were then introduced in evidence the following:

"(b) Tax deeds from the District of Columbia to T. M. Hanson, dated March 9, 1875, recorded in liber 781, folios 102 and 104, purporting to convey in fee the same property.

"(c) Deed from Thomas M. Hanson et ux. to Frances H. Ball, dated March 25, 1875, recorded

in liber 780, folio 103, purporting to convey in fee the same property.

"(d) Record of a tax sale Jan. 22 to 31st, 1889, dated Feb. 9, 1889, recorded in liber 1358, folio 368, of same property, assessed to Frances H. Ball, sold to B. L. Walker.

"(e) District of Columbia to Bartow L. Walker, tax deed dated March 25, 1891, recorded in liber 1562, folio 437, purporting to convey in fee same property, assessed to Frances H. Ball, sold Jan. 22, 1889.

"(f) Record of a tax sale Apr. 11th to 22nd, 1893, recorded May 1, 1893, recorded in liber 1797, folio 466, lot 8, in square 1107, assessed to F. H. Ball, and sold to Montgomery Clagett.

"(g) Deed from Bartow L. Walker to Paul J. Brant, dated Nov. 1, 1894, recorded in liber 1967, folio 344, conveying all right, title, and interest of the party of the first part in and to all real estate in the District of Columbia.

"(h) Deed from Paul J. Brant to Virginia Alabama Co., dated Dec. 29, 1894, recorded in liber 1984, folio 25, conveying all right and title of party of the first part in and to all real estate in the District of Columbia.

"(i) Record of deed from Paul J. Brant to Virginia Alabama Co., dated March 28, 1895, recorded in liber 2004, folio 4, conveying as next above.

"(j) Record of a tax sale report 1895, recorded May 4, 1895, in liber 2002, folio 1, lots 7 and 8, square 1107, assessed to B. L. Walker, sold to Allen C. Clark.

"(k) Record of a tax deed from the Commissioners of the District of Columbia to Montgomery Clagett, dated May 3, 1895, recorded July 15, 1895, liber 2033, folio 328, purporting to convey in fee lot 8, in square 1107, assessed to F. H. Ball, for year ending June 30, 1892, sold April 13, 1893."

An exception was noted by plaintiffs to the introduction of the three deeds lettered "g," "h," and "i" upon the ground that the description therein is too indefinite to constitute color of title.

Garnett S. Brown, a nephew of said Frances H. Ball, was thereupon called as a witness for defendants and produced the following tax and tax redemption receipts, which were put in evidence:

"TAX RECEIPTS.

Years.	Names.	Lots.
1877 to 1880.....	Frances H. Ball.....	7 to 11.
1891.....	" " " ".....	" "
1892.....	Garnett S. Brown.....	7.
1893.....	Bartow L. Walker.....	7 to 11.
1895 and 1896.....	" " " ".....	8 to 11.
1896 to 1900.....	" " " ".....	7.
1897 to 1902.....	Montgomery Clagett.....	8 to 11.

"REDEMPTION RECEIPTS.

"Year 1894, assessed to Bartow L. Walker, lots 8 to 11; sold, April 9, 1895; redeemed, July 15, 1895.

"Year 1895, assessed to Bartow L. Walker, lot 7; sold, April 18, 1896; redeemed, May 22, 1896."

The witness, having testified that his aunt was dead, identified the following lease as having been in the possession and custody of his aunt during her lifetime:

"This indenture made this 30th day of March, in the year of our Lord eighteen hundred and sixty-seven, between Frances H. Ball, of the one part, and Leonidas Scott, of the other part, all of the city, county, and District of Columbia.

"Witnesseth that the said Frances H. Ball doth hereby let unto the said Leonidas Scott, his heirs and assigns, certain lots of land in the city aforesaid, together with all and singular the buildings and improvements thereon, and known as lots seven, eight, nine, ten, and eleven, in square 1107, as numbered on the map and plan of said city, for the term of six years from the 1st day of September, 1886, for the yearly rent of thirty-three and one-third dollars, and in addition to which the said Leonidas Scott doth hereby bind himself, his heirs, executors, administrators, and assigns to pay or cause to be paid the yearly corporation taxes that may become due and payable thereon, and at the expiration of said term the said Leonidas Scott, his heirs and assigns, shall and will quietly and peaceably surrender and yield up to the said demised premises with the appurtenances thereunto belonging to the said Frances H. Ball, her heirs and assigns.

"In witness whereof, the said parties have hereunto set their hands and seals the day and year hereinbefore written.

"FRANCES H. BALL (Seal).

"LEONIDAS SCOTT (Seal).

"Witness:

"J. F. CALLAN."

The certificate of the notary before whom the lease was acknowledged was attached thereto. This lease was temporarily received by the court, its admissibility to be determined at a later stage of the trial.

After introducing records from the office of the assessor of the District of Columbia showing assessment of said lots for taxes during a part of the controverted period (to the introduction of which no exception was noted), the witness Brown was recalled and testified that his deceased uncle, R. L. Stanton, formerly collected rent for Frances H. Ball on said lots. Witness was familiar with his uncle's handwriting and identified the following as having been written by him:

"Copy."

"WASHINGTON, D. C., April 30th, 1883.

"Received of James Jones for Mrs. Frances H. Ball \$25 in part payment of rent, taxes, etc., for the use of certain lots in square 1107, Washington. The whole indebtedness being \$52, which amount includes the rent of said lots for one year from April 30, 1883, to April 30, 1884, on condition that the said Jones shall pay Mrs. Ball the balance of \$27 on the first day of June, 1883. R. L. Stanton, agent of Mrs. Frances H. Ball."

Plaintiffs objected and excepted to the introduction of this paper on the ground that "it does not in terms refer to the lots in controversy; also on the ground that it is incompetent and immaterial." Witness knew that Jones had paid rent to Mrs. Ball for the lots; Jones came to witness' house to see Mrs. Ball about the lots; after her death Jones looked after lot 7 for witness.

Several witnesses were then introduced who testified in substance that immediately after the civil war several colored men, Gantt, Jones, Thompson and said Leonidas Scott occupied all of said square 1107 as a brickyard. The square was then entirely enclosed with a wire fence which remained for about twenty years. There was a kiln on lot 8 and a stable on lot 7. Just how long Scott was connected with the firm is uncertain, but it does appear that Gantt and Jones continued the business down to 1893, when they sold to one Thomas Potee, who was soon succeeded by H. A.

Herrell & Co., the defendants herein. Both lots from 1868 to the time this suit was instituted were continuously occupied in connection with the brickyard. Active operation would be suspended during a part of the winter months, but during such periods of inactivity someone remained on or near the premises to protect the sheds, platforms, tables, etc., which remained thereon and which were used in making brick.

Mrs. Ball died in 1894 leaving a will dated April 13, 1886, and which was filed in the office of the register of wills July 21, 1904. The defendants produced Robert G. Davidson, one of the witnesses to the will, who identified his signature thereto, and after giving the usual testimony concerning its execution testified that one other witness was dead and the third, Lilly C. Moore, was a resident of Maryland. Witness was then asked whether said Lilly C. Moore signed the will as a witness, and, over the objection and exception of plaintiffs, replied that she did. The will was thereupon offered in evidence, the material part of which is as follows:

"Of the five lots which I own in the city of Washington, D. C., I give and devise the corner lot to Garnett Brown, son of Edward H. Brown. I give and devise the four remaining lots to Eliza L. Clagett and Nannie H. Stone and Mary C. R. Harrison and Catherine B. Ball, to be selected as their names appear, namely, Eliza L. Clagett to have first choice, Nannie H. Stone to have second choice, Mary S. Harrison to have third choice, Catherine B. Ball the remaining one."

Evidence was then offered that the defendants Herrell and O'Neill were in possession of the lots in controversy in privity of estate with those claiming under Frances H. Ball. The jury was instructed that all deeds and instruments of date subsequent to the bringing of the suit were admitted solely for the purpose of showing the ground upon which the Capital Syndicate Company was admitted to defend.

No question was raised by the defendants as to the sufficiency of plaintiffs' title, and the court, without objection, instructed the jury in substance that the record title to said lots was in the plaintiffs. We, therefore, proceed to a consideration of plaintiffs' assignment of errors.

The first assignment of error relates to the ruling of the court in admitting tax deeds from Bartow L. Walker to Paul J. Brant and from Brant to the Virginia-Alabama Company. The first of these deeds is dated in 1894. The court granted defendants' eighth prayer which, the record discloses, "was conceded by plaintiffs," and which instructed the jury "that the defendants have shown that Frances H. Ball had color of title to the land in question," and "defendants' twelfth prayer, which was conceded by the plaintiffs," and which reads as follows:

"If the jury finds from the evidence that Frances H. Ball, under color and claim of title to the lots in controversy, leased the same to a tenant as early as the year 1868, and remained in possession of said lots through tenants for the full and uninterrupted period of more than twenty years from that date, and that such possession was open, continuous, notorious, adverse, actual, and exclusive under claim of ownership, then they are instructed, as a matter of law, that if they should find from the evidence that the plaintiffs have established a record title to said lots, the possession

of said Frances H. Ball, if found by the jury in the manner hereinbefore set forth, destroyed the title of the plaintiffs, and it passed to said Frances H. Ball, and their verdict must be for the defendants, unless you find from the evidence that the defendants entered upon the lots in controversy as mere trespassers."

Inasmuch as defendants relied solely upon the adverse possession of Frances H. Ball to defeat plaintiffs' record title, it is evident that the jury must have found for the defendants under the prayer just quoted. That being so, it is of no consequence whether the tax deeds objected to were introduced or not, since their date is subsequent to the ripening of Mrs. Ball's title by adverse possession.

It was not necessary for defendants to rely upon said tax deeds as color of title. While the defendants proceeded to trace these tax titles to themselves, it was not necessary for them to do so. In *Reeves v. Low*, 8 App. D. C., 105; 24 Wash. Law Rep., 113, the contention was made that, in order to defeat a plaintiff in ejectment claiming the record title by proof of an outstanding title by adverse possession in some one other than the plaintiff, the defendant must not only show such outstanding title by adverse possession, but also that the defendant holds the possession for the holder of such adverse title, or claims in his own independent right, the holder of the adverse title still asserting his claim. The court disposed of this claim in these words: "It is beyond question that a plaintiff in ejectment may be defeated by proof of an outstanding title by adverse possession in another person, who is a total stranger to the suit, and between whom and the defendant there is no privity. *Smith v. McCann*, 24 How., 398; *Boswell v. DeLanzo*, 20 How., 29; *Love v. Simms*, 9 Wheat., 575; *Harpending v. Dutch Church*, 16 Pet., 455; *Leffingwell v. Warren*, 2 Black, 579; *Dickerson v. Colgrove*, 100 U. S., 582; *Hall v. Gittings*, 2 H. & J., 125; *Hammond v. Inloes*, 4 Md., 173; *Lannay v. Wulson*, 30 Md., 545."

It is not necessary that a defendant in ejectment should show in what right he claims, or that he should show any right whatever in himself." Mrs. Ball, having occupied these lots adversely for twenty years, all right of plaintiffs' predecessor in title was extinguished, and the title in Mrs. Ball was as perfect as though she had produced a deed in fee simple from the true owner; *Leffingwell v. Warren*, 2 Black, 599; *Harpending v. Dutch Church*, 16 Pet., 455.

The second assignment of error specifies that the court erred in admitting the lease to Leonidas Scott and in charging the jury that it constituted color of title. No exception was noted to the introduction of this lease, but, even if there had been, it would not have availed appellants, because the lease tended to show claim of title by Mrs. Ball. *Briel v. Jordan*, 27 App. D. C., 205; 34 Wash. Law Rep., 341. The court in its charge in referring to this lease used the terms "color of title" and "claim of title" indiscriminately, but the plaintiffs were not prejudiced thereby, because, as previously pointed out, they conceded that the deed of February 25, 1868, to Mrs. Ball constituted color of title.

The third assignment of error relates to the admission of the records of the assessor's office, but is not predicated upon an exception, and, therefore must be passed.

In the fourth assignment of error it is contended



that the receipt from R. L. Stanton to James Jones should not have been admitted in evidence. No objection was offered to the admission of this paper because it was a copy, the objection being that it did not in terms refer to the lots in controversy, and that it was incompetent and immaterial. The witness who identified the paper testified that R. L. Stanton was the agent of Mrs. Ball at the time the receipt was given and that James Jones to whom it was given occupied lots 7 and 8, and did in fact pay rent for the use of said lots to his aunt. Mrs. Ball, Mr. Stanton, and James Jones were dead. Clearly, had the original receipt been produced, it would have been admissible in connection with evidence identifying the lots. As no objection was offered because the paper was a copy, it is too late now to make the point.

The assignment of error involving the proof of the execution of the will of Frances H. Ball by the testimony of one subscribing witness, the second witness being dead, and the third being a nonresident, is without merit. Section 132 of the Code specifically provides that if the testimony of the resident witness is taken and any other witness resides out of the District, it shall be sufficient to prove the signature of such nonresident witness, and that the will shall thereupon be admitted to probate.

The next assignment of error necessary to be noticed relates to the granting of defendants' seventh prayer, which as amended by the court, is as follows:

"In determining the facts as to adverse possession by the defendants, and those under whom they claim, the jury are instructed that the entering upon the lots in controversy, making improvements thereon, digging clay therefrom for making and depositing brick or other material thereon, the erection and maintenance thereon of a stable or other structures, are all circumstances which, if they find from the evidence were done by the defendants, or those under whom they claim, or the tenants of those under whom the defendants claim, are all facts which, if done under color of title, evince an intention of asserting ownership and possession, and if such use and occupation are continued for more than twenty years prior to the institution of this suit in the manner set forth in the first prayer, the jury should find in favor of the defendants."

The ground for this objection is that it permitted the defendants to select for the jury detached and inconclusive facts and circumstances favorable to the defendants. We do not think the charge is subject to this objection. It is a fair synopsis of the testimony. Inasmuch as the plaintiffs rely solely upon their record title, it is obvious that there were no facts and circumstances put in evidence in their behalf to which the attention of the jury might have been directed in this charge.

Other exceptions were noted, but they are not of sufficient importance to merit consideration here.

The judgment is affirmed, with costs, and it is so ordered. Affirmed.

Master and Servant—Defective Appliances.—A master held liable to the parents of a minor for injuries to the latter from unsafe appliances furnished by defendant without warning. *Parrenin v. Crescent City Stockyard & Slaughterhouse Co.*, (La.), 44 So. Rep., 990.

## Court of Appeals of the District of Columbia.

MARY ELLEN O'BRIEN ET AL., EXECUTORS,  
APPELLANTS,

v.

PABST BREWING COMPANY.

### EVIDENCE; LEASE; ASSIGNMENT.

1. The construction of written evidence is exclusively for the court.
2. In an action to recover the sum of \$2,000 alleged to be due from defendant for the consent of plaintiff to the assignment of a lease from plaintiff to one E, it appeared that defendant had agreed to pay said sum for plaintiff's consent to the assignment of the lease and the modification of certain of its provisions, but that the transaction had fallen through because of the refusal of E to execute the assignment, and E had continued in possession of the property, paying rent to plaintiff. Held that the trial court properly directed a verdict for the defendant, and the judgment affirmed.

No. 1791. Decided March 31, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 45,830, in an action to recover an amount alleged to be due for consent to the assignment of the lease. Affirmed.

Mr. EDWIN FORREST for the appellants.

Mr. D. S. MACKALL and Mr. J. A. MAEDEL for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an action of assumpsit instituted against appellee for the recovery of the sum of \$2,000. The declaration sets forth that Daniel O'Brien, the original plaintiff, was the owner of what is known as the "Engel Hotel" property in this city, which he, the said O'Brien, leased to William A. Engel for a term of ten years from February, 1900; that "it was absolutely essential to any assignment or transfer of said lease that the consent of the plaintiff should first be had and obtained;" that said Engel, who was the lessee of the plaintiff, at the time of the bringing of the suit, was indebted to the defendant, the appellee herein, in a large sum of money for which the defendant had no security, and was desirous of securing from the plaintiff his consent to the assignment of said premises from the said Engel to the said defendant; that the defendant, through its authorized agent, promised and agreed to pay the defendant the sum of \$2,000 on the delivery by the plaintiff of plaintiff's consent to said assignment; that he duly executed said consent in accordance with his agreement and delivered the same to the defendant through its agent; and that the defendant, although requested, has refused and neglected to pay said \$2,000 or any part thereof.

In the affidavit of defense executed by Herman E. Gasch, appellee's agent in this city, it is averred that the appellee promised to pay the plaintiff the said sum of \$2,000 for his written consent for an absolute assignment of said lease "in the event and on the condition only that the lessee should execute said assignment;" that the plaintiff signed said consent upon that understanding; that the assignment was presented to the lessee for execution, and every effort was made to secure his signature thereto but without success, and that the said lessee never did execute said assignment and declined to do so, and remained in full possession and enjoyment of said property.

At the trial the following letter addressed to the appellee's agent in this city was introduced in evidence:

"MILWAUKEE, WIS., Mar. 21, 1902.

"MR. HERMAN E. GASCH,

"1307 F St. N. W., Washington, D. C.

"DEAR SIR: In reply to your favor of the 18th inst., requesting an expression of an opinion from us as to what remuneration we would be willing to make Mr. O'Brien for his consent to an assignment by Wm. Engel of his lease of the Engel Hotel property in Washington to the Pabst Brewing Company, we beg to say that as our Mr. Schucht has previously explained to Mr. McNally, the only object we have in view in this matter is one of security for the money invested by us in the premises, and which, as you well know, Mr. Engel is perfectly willing to give us providing Mr. O'Brien will consent.

"Now, while Mr. O'Brien is neither asked to part with any of his rights or privileges under the present lease, nor to grant any new privileges to the Pabst Brewing Company as tenants, which are not already enjoyed by Mr. Engel, we are willing, as above explained, for the sake of security only, to pay \$1,000 in cash to the owner, Mr. O'Brien, for his consent to the assignment to us with the privilege of subletting to others, we, however, remaining responsible for the rent.

"This sum, if Mr. O'Brien chooses to accept it, will be just that much in his pocket without giving anything in return except his consent which costs him nothing and leaves his present position as landlord undisturbed in every particular.

"Kindly submit this offer to Mr. O'Brien, through his attorney, Mr. McNally, and let us know whether he elects to avail himself of it or not.

"Yours, truly,

"PABST BREWING COMPANY,  
"By FRED PABST, JR., 2nd V. P."

It appears that this letter was submitted to Mr. McNally, attorney for Mr. O'Brien, who thereupon interviewed his client, who declined to consent to the assignment upon the terms proposed in said letter; that negotiations continued for several months, which culminated in O'Brien meeting said Schucht and Gasch at McNally's office for the purpose of executing his consent to an assignment of said lease.

The deposition of Mr. O'Brien, who had meanwhile died, was offered in evidence. The witness identified a paper, in duplicate, containing a draft of an assignment of said lease, an assent to said assignment executed by said O'Brien, and an acceptance to be signed by appellee. This paper was offered in evidence, and reads as follows:

"Washington, D. C., June 11th, 1902.—To be attached to and become a part of a certain lease bearing date the 5th day of February, A. D. 1900, by and between Daniel O'Brien, of the District of Columbia, party of the first part, and William A. Engel, of same place, party of the second part, and recorded in the office of the recorder of deeds for the District of Columbia February 18th, A. D. 1900, in liber No. 2466, folio 378 et seq., one of the land records of the said District of Columbia.

"For and in consideration of one (1) dollar, to me in hand paid, the receipt whereof is hereby acknowledged, and for other valuable considerations, I hereby assign, set over, transfer, and deliver unto the Pabst Brewing Company, a Wisconsin corporation, of Milwaukee, Wisconsin, all my right,

title, and interest in the within lease and the real estate therein leased to me to said Pabst Brewing Company for the full term of this lease, to take effect the tenth day of June, A. D. 1902.

"In witness whereof I have hereunto set my hand and seal to this and duplicate of like tenor and date.

"\_\_\_\_\_ (Seal.)

"I hereby consent to the above assignment of the within lease from William A. Engel to the Pabst Brewing Company, and in consideration of two thousand (2,000) dollars to me in hand paid, the receipt whereof is hereby acknowledged, I hereby qualify the terms of said lease to the extent that said Pabst Brewing Company shall be allowed to sublet the said real estate in and upon the following conditions, to wit: First, that no subtenant shall be permitted to carry on any unlawful or dangerous business in said premises, and, second, that the Pabst Brewing Company shall always be responsible for the payment of the rent under said lease covenanted to be paid.

"In witness whereof I have hereunto set my hand and seal to this and duplicate of like tenor and date.

DANIEL O'BRIEN. (Seal.)

"Witness: M. A. SCHEELE.

"We hereby accept the above assignment of the within lease from William A. Engel to ourselves to all of the terms and conditions of said lease as qualified by the next above written consent of Daniel O'Brien, lessor.

"In witness whereof we have caused these presents to be signed by our president and sealed and attested by our secretary, and we hereby declare that at a regular meeting of the board of directors of our said corporation that \_\_\_\_\_ was appointed as our attorney to acknowledge these presents for our corporation before a notary public to the end that the same may be recorded in the land records of the District of Columbia.

"\_\_\_\_\_

"District of Columbia, to wit:

"I, M. A. Scheele, a notary public in and for the District aforesaid, do hereby certify that Daniel O'Brien, who is personally well known to me to be the person who executed the foregoing and annexed assent and assignment of lease, dated eleventh day of June, A. D. 1902, personally appeared before me in said District and acknowledged the same assent to assignment of lease to be his act and deed.

"Given under my hand and notarial seal this 11th day of June, A. D. 1902.

"[SEAL.]

M. A. SCHEELE,  
"Notary Public, D.C.

"District of Columbia, to wit:

"I, \_\_\_\_\_, a notary in and for the District aforesaid, do hereby certify that William A. Engel, who is personally well known to me to be the person who executed the aforesaid and annexed assignment of lease, dated June 11th, A. D. 1902, personally appeared before me in said District and acknowledged the said assignment of lease to be his act and deed.

"Given under my hand and notarial seal this 11th day of June, A. D., 1902."

Witness further testified that Mr. McNally was his attorney in this matter; "that he left everything to him; that he had nothing to do with the

matter except to instruct McNally as to the price until he met at the office for the purpose of executing the papers." Owing, apparently, to the physical condition of the witness his testimony was somewhat conflicting. It is clear, however, that he relied wholly upon his attorney in the negotiations leading up to the execution of the said paper. It is also clear that when said paper was executed it was handed Gasch and Schucht without any demand whatever for the payment of the \$2,000; that it was fully understood that the paper was to be taken to Engel before appellee's agent returned to make payment to the witness. Witness at one point in his testimony said: "that he understood that Schucht and Gasch when they got the papers were going down to see Engel; that they were going down there as he believed he understood for the purpose of getting Engel's signature and as soon as they, Gasch and Schucht, got his signature they were coming back to see him; they said they were going down there to see Engel; and he supposed for that purpose." The witness further testified that he only knew that Engel refused "to make the assignment from the matter stopping; that he collected rent from Engel from that time right straight along and he continued to be the tenant and the man who paid witness the rent; that Engel has continued to do that right straight along to present time." Witness further testified that when he first spoke to Mr. McNally with reference to bring suit, the latter said: "I don't know, I wouldn't bring it."

John E. McNally, Esq., testified that upon receipt of said letter of March 21st from the appellee company he consulted his client, O'Brien, who, however, was unwilling to make the assignment for the sum mentioned therein; that when the negotiations first opened O'Brien asked witness whether Engel would be injured; that Engel was sent for and came to witness' office and informed witness that he, Engel, wanted to make an assignment of the lease and wanted O'Brien to sign the consent; that after several months negotiations an arrangement was made whereby Gasch and Schucht were to meet O'Brien at his (McNally's) office for the purpose of obtaining O'Brien's signature to a consent to the assignment of said lease; that O'Brien signed, sealed and acknowledged the consent and delivered it to Schucht and Gasch, and that they took the paper away with them; that O'Brien waited in his office an hour for Schucht and Gasch, who, however, did not return; that nothing was said at the time the paper was executed about the payment of the \$2,000; that sometime elapsed before witness got into communication with Gasch and Schucht; that he finally either telephoned or met Gasch who told him "that he had taken the papers down to Engel to sign them and that the latter and Schucht became very excited over the matter; that the papers were around to Mr. Maurice Smith's office, a member of the bar, now dead." Witness further testified that, when he went to get an order from Gasch for said duplicate papers containing O'Brien's consent, "he probably might have told Gasch that he was sorry the thing had fallen through." Witness said that no demand was ever made for the payment of the \$2,000 until Mr. Forrest wrote the appellee a letter on November 24, 1902.

At the conclusion of plaintiff's evidence a motion was made to instruct the jury to return a

verdict for the defendant. This motion was granted and the plaintiff appealed.

The principle that the construction of written evidence is exclusively with the court is so well settled that no citation of authorities is necessary to support it. Owing to the Statute of Frauds the plaintiff necessarily relied upon the letter of March 21, 1902, from the defendant to its agent and upon the paper containing the consent to the assignment of the lease. The testimony introduced merely tended to show the facts and circumstances surrounding the transaction, and aided the court in passing upon the written evidence. As the declaration sets forth, Engel was indebted to the defendant in a large sum. He was plaintiff's lessee for a long term of years and under a lease that he could not legally assign without the previous consent of the plaintiff in writing. The defendant submitted an offer to the plaintiff of \$1,000 "for his consent to an assignment" of said lease—not for his consent that Engel might assign the lease. This offer was conditioned upon a modification of the lease so that the defendant might sublet to others, which indicates that the defendant had in mind at the time the offer was made an actual and consummated assignment of the lease. Inasmuch as under the terms of the lease Engel had no authority to execute an assignment until O'Brien had assented thereto in writing, his signature was first obtained. It is apparent, however, that both O'Brien and his counsel then understood the transaction would not be completed until Engel had executed the assignment, for otherwise the \$2,000 would have been demanded upon the delivery of the assent. O'Brien's conduct in permitting defendant's agents to take the paper he had signed to Engel for his signature without making any demand upon them and without, in fact, saying anything about the payment of the \$2,000 is inconsistent with plaintiff's subsequent interpretation of the agreement. It is consistent, however, with the construction which the court evidently placed upon it. As bearing upon the position of McNally at the time, it is significant that he should have remarked to Gasch "that he was sorry the thing had fallen through." It is probably true that O'Brien, being a feeble old man, labored under the impression that he was to receive \$2,000 for signing the consent, but it will be remembered that he testified that McNally represented him in the negotiations with the defendant company, and "that he had nothing to do with the matter except to instruct McNally as to the price until he met at the office for the purpose of executing the papers." It is quite possible also that McNally, having talked with Engel and believing that he would not object to executing the assignment, said nothing to defendant's agents as to the time when the \$2,000 was to be paid. The conduct of both parties at the time O'Brien executed the consent indicates, as we have said before, their then understanding of the terms of the agreement, and it would be unconscionable in the light of the original proposal which the defendant made to O'Brien, the paper containing the consent, and the facts and circumstances surrounding the transaction, to infer that the defendant ever intended to pay, or, in fact, agreed to pay, O'Brien the sum of \$2,000 unless Engel executed an assignment of the lease, without which O'Brien's consent amounted to nothing.

It appearing that Engel refused to execute the

assignment we think the court was fully justified in directing a verdict.

The judgment, therefore, is affirmed, with costs, and it is so ordered.

Affirmed.

DISTRICT OF COLUMBIA ET AL.,  
APPELLANTS,

v.

THOMAS BLACKMAN.

No. 1881. Decided April 7, 1908.

HEARING on a motion to dismiss an appeal. Denied.

Mr. WHARTON E. LESTER for the motion.

Mr. E. H. THOMAS, Mr. HENRY P. BLAIR, and Mr. T. PERCY MYERS opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee has moved to dismiss this appeal for the reason alleged that the bill of exceptions in the record was settled after the time within which it could be done under the rules of court.

It appears from the transcript that the judgment was rendered December 20, 1907, during a term of court which expired January 7, 1908. On January 2d an order was made extending the term for thirty-eight days for the purpose of settling the bill of exceptions. The period of extension expired February 20, 1908. The transcript contains an entry showing that the bill of exceptions was submitted to the court on February 18th, two days before the expiration of the term fixed. The date of signature appears as of March 6, 1908.

In the absence of anything to the contrary, it must be presumed that this submission of the bill was made upon proper notice, as required by Rule 55 of the Supreme Court of the District of Columbia. This is quite different from a mere filing of a bill with the clerk without calling the same to the attention of the court. The appellants' duty, under the rule, was performed when the bill was prepared and submitted within time to the court for settlement. The bill having been presented within the proper time, the trial justice could have retained it for a time necessary to enable him to determine its correctness, and his approval and settlement of it could have been entered now for then. In signing this bill it was evidently dated as of the day of signature, although the time for settlement had then expired. This was, apparently, a mere inadvertence on the part of the trial justice, whose attention, apparently, was not called to the fact, and we think, under the circumstances, that it may be considered as an execution now for then.

The motion to dismiss will be overruled with costs.

Motion denied.

Discharge—Second—Non-Dischargeable Debts.—The U. S. Circuit Court of Appeals, Second Circuit, has held in *Matter of Julius Silverman*, 19 Am. B. R., 460, that a bankrupt not discharged within the time limit of section 14, can not file a second petition for adjudication and obtain a discharge from the debts which were scheduled and provable in the previous bankruptcy.

Attorney for Bankrupt Collected Money Prior to Adjudication—Jurisdiction of Bankruptcy Court.—Where a bankrupt's attorney collected money for him prior to the filing of the petition in bankruptcy, it is held, in *re Ellis Bros. Printing Co.*, 19 Am. B. R., 472, that the application of the collections by the attorney to an alleged indebtedness of the bankrupt to him for legal services does not justify a claim of adverse title, and the bankruptcy court may exercise summary jurisdiction to inquire into the facts.

Debts—Diversion of Accommodation Note of Bankrupt—Who Not Bona Fide Purchaser—Burden of Proof.—Where the accommodation note of a corporation is made by its treasurer without authority, upon an agreement that it should be used only as collateral, it is held, in *re Hopper-Morgan Co.*, 19 Am. B. R., 518, that one who purchases the note not in the regular course of business and with knowledge that it had been issued for some particular purpose, is not a bona fide holder, and the maker having been adjudged bankrupt, the purchaser of the note in the absence of proof that the one from whom he bought it was a bona fide holder, may not prove a claim upon the note in the bankruptcy proceedings.

Assets—Commissions of Agent on Policies Written Prior to Adjudication.—Where a contract between a life insurance company and a general agent provides for payment to him of a commission upon first year and renewal premiums received by the company on policies procured by him, which commissions were to accrue only as the premiums were paid to the company in cash, the United States Circuit Court of Appeals, Second Circuit, has held, in *Matter of Wright*, 19 Am. B. R., 454, that his commissions on renewal premiums on policies written prior to his adjudication as a bankrupt, but unaccrued at that time, pass to his trustee under section 70a, as property which the bankrupt might have transferred without the consent of the company.

Chattel Mortgage—Given on the Verge of Bankruptcy—Preference.—Where a banking firm, the largest creditor of an insolvent mercantile company, just before its adjudication, acted as the lender's agent in making a loan the proceeds of which were deposited in the agent's bank, it has been held in *re Lynden Mercantile Co.*, 19 Am. B. R., 444, that a chattel mortgage on the bankrupt's stock of merchandise which practically constituted all of its assets, given to secure a demand note given for the loan, is not a valid claim against the bankrupt's estate, as the primary object of the transaction was to enable the bank to obtain an unlawful preference over other creditors, of which the lender had constructive notice.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

## FIRST INSERTION.

Hamilton, Colbert, Yerkes & Hamilton, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Quilter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1908. JOHN QUINN, 447 7th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 16,187. Administration. [Seal.] 19-3t

Hamilton, Colbert, Yerkes & Hamilton, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of David Leverone, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1908. FREDERICA LEVERONE, 748 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,213. Administration. [Seal.] 19-3t

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Koyal T. Frank, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1908. EMMA KNIGHT FRANK, 2 Grafton st., Chevy Chase, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,173. Administration. [Seal.] 19-3t

Shipley Brashears, Jr., Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susannah Albrittain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of May, 1908. SHIPLEY BRASHEARS, JR., 1319 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,864. Administration. [Seal.] 19-3t

Duane E. Fox, Geo. Francis Williams, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William L. Ralph, Deceased,  
No. 15,209. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Louise M. Ralph, his widow, it is ordered this 8th day of May, A. D. 1908, that Henry J. Ralph, and all others concerned, appear in said court on Wednesday, the 10th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

## Legal Notices.

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Josephine C. A. Page, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1908. MARTHA A. ALEXANDER, 8006 11th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,239. Administration. [Seal.] 19-3t

Willis E. Myers, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel Shannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1908. GEORGE C. SHANNON, 709 N. Fulton ave., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,247. Admn. [Seal.] 19-3t

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles D. Holt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 1st day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of May, 1908. WILLIAM A. GORDON, by Gordon & Gordon, Attorneys. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,242. Administration. [Seal.] 19-3t

Reginald S. Huidekoper, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederic W. Huidekoper, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of May, 1908. REGINALD S. HUIDEKOPER, 1614 18th st. N. W.; VIRGINIA C. HUIDEKOPER, FREDERIC L. HUIDEKOPER. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,251. Administration. [Seal.] 19-3t

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Christian Hauge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1908. ELLEN S. MUSSEY, 618 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,082. Administration. [Seal.] 19-3t

## Legal Notices.

[Filed May 7, 1908. J. R. Young, Clerk.]

E. S. Mussey, Solicitor

In the Supreme Court of the District of Columbia.  
**Frank B. King, Executor Under Will of Anna Smith Mallett, Deceased, v. Jean L. Shelton et al.**  
 In Equity, No. 27,735.

The object of this suit is to obtain a decree construing the will of Anna S. Mallett, deceased, and for the confirmation of Wm. H. Saunders, George W. White, and Frank B. King as trustees named in said will. Upon motion of complainant it is, this 7th day of May, A. D. 1908, ordered that the defendants, Jean Louisa Shelton, Anna Gertrude Shelton, a minor, and Robert Philo Shelton, a minor, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. By the Court:

[Seal] **ASHLEY M. GOULD, Justice.** A true copy.  
 Test: J. R. Young, Clerk, by Wms. F. Lemon,  
 Asst. Clerk. 19-3t

W. C. Balderston, Attorney

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In re Estate of Owen Riley, Deceased.  
 No. 15,061.

Upon consideration of the report of Eugene Riley, Delle R. Nevyus, and W. Frank McLean, executors, reporting the sale of original lot numbered eight (8), in square numbered nine hundred and ninety-two (992), lying and being in the District of Columbia, to William Henry Harrison for the price of two thousand nine hundred dollars (\$2,900), it is, by the court, this 4th day of May, 1908, ordered that said sale be, and the same is hereby, ratified and confirmed unless cause to the contrary be shown on or before 4th day of June, 1908. Provided a copy of this order be published once a week for three (3) successive weeks before said day.

[Seal] named day in The Washington Law Reporter.  
**ASHLEY M. GOULD, Justice.** A true copy.  
 Attest: James Tanner, Register of Wills. 19-3t

Hargrove &amp; Morris, Attorneys

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In re the Estate of Anna Marie Colman, Deceased.  
 Administration. No. 14,769.

Upon consideration of the report of the sale of lot 63, in Lewis W. Vale's subdivision in square 212, with the improvements thereon known as No. 2 Iowa Circle, in the city of Washington, District of Columbia, to James K. Jones, Jr., for the sum of \$12,200, cash, by the executors and trustees of the estate of Anna M. Colman, deceased, together with the several exhibits filed therewith, it is, this 4th day of May, 1908, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 4th day of June, 1908. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. By

[Seal] the Court: **ASHLEY M. GOULD, Justice.**  
 A true copy. Attest: James Tanner, Register of Wills. 19-3t

William A. McKenney, Attorney

Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Teunis S. Hamlin, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 25th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of May, 1908. **AMERICAN SECURITY AND TRUST COMPANY,** by William A. McKenney, Attorney. Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,441. Administration. [Seal.]** 19-3t

## Legal Notices.

F. S. Bright, Solicitor

In the Supreme Court of the District of Columbia.  
**John L. Edwards, Plaintiff, v. The Unknown Heirs, Devisees, or Alienees of Walter S. Chandler et al., Defendants.** In Equity, No. 27,219.

The object of this suit is to establish of record by possession the title of plaintiff to parts of original lots numbered ten (10) and eleven (11) in square numbered one hundred and twenty-two (122), in the city of Washington, in the District of Columbia, beginning for the same at a point on the north line of said lot ten (10), seventy-seven feet eleven inches from the northeast corner of said square; thence west on said north line seventy-seven feet eleven inches to the dividing line between lots numbered nine (9) and ten (10); thence south along said dividing line one hundred and eighteen feet one inch to the dividing line between lots numbered eleven and twelve; thence east along said dividing line seventy-seven feet and eleven inches; thence north one hundred and eighteen feet one inch to the place of beginning. On motion of the plaintiff it is this 4th day of May, A. D. 1908, ordered that the defendants, the unknown heirs, devisees or alienees of Walter S. Chandler, Nathaniel Preston, A. Rench, John Ludwick Young, Susan K. Williams, Ellen M. Boggs, Hebe Ashley, Catherine Rhodes, Nancy Rhodes, and William Rhodes, cause their appearance to be entered herein, on or before the 10th day of June, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for one month in The Washington Law Reporter and The Washington Herald. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. may 8, 29

Michael A. Mess, Attorney

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Cyrus J. Reed, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1908. **ALVA S. TABER, General Land Office.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,249. Administration. [Seal.]** 19-3t

G. Percy McGlue, Attorney

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles E. Barrick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1908. **MARGARET M. BARRICK, No. 119 Mass. ave. N. E.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,216. Administration. [Seal.]** 19-3t

R. G. Finney, Solicitor

In the Supreme Court of the District of Columbia,  
 Holding an Equity Court.

**Nannie Bett Branch, Complainant, v. James Branch and Mary Braxton, Defendants.** Equity No. 27,628.

The object of this suit is to obtain an absolute divorce from the defendant, James Branch, on the ground of adultery committed with the defendant, Mary Braxton. On motion of the complainant, it is, this 6th day of May, A. D. 1908, ordered that the defendants, James Branch and Mary Braxton, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington

[Seal] Herald. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-3t



**Legal Notices.**

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Josephine C. A. Page, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1908. **MARTHA A. ALEXANDER**, 3008 11th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,239. Administration. [Seal.] 19-3t

**Willis E. Myers, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel Shannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1908. **GEORGE C. SHANNON**, 700 N. Fulton ave., Baltimore, Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,247. Adm'n. [Seal.] 19-3t

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles D. Holt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 1st day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distribute shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of May, 1908. **WILLIAM A. GORDON**, by **Gordon & Gordon, Attorneys**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,242. Administration. [Seal.] 19-3t

**Reginald S. Huldekoper, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederic W. Huldekoper, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of May, 1908. **REGINALD S. HULDEKOPER**, 1614 18th st. N. W.; **VIRGINIA C. HULDEKOPER**, **FREDERIC L. HULDEKOPER**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,231. Administration. [Seal.] 19-3t

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Christian Hauge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1908. **ELLEN S. MUSSEY**, 613 15th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,082. Administration. [Seal.] 19-3t

**Legal Notices.**

**William A. Donch, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**Estate of Addie R. Perkins, Deceased.**  
 No. 15,255. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elena Smith Chapman, it is ordered this 7th day of May, A. D. 1908, that Caroline Smith, Raymond Smith, Clayton B. Smith, Franklin A. Smith, and all others concerned, appear in said court on Friday, the 12th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice**. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

**D. W. O'Donoghue, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
 Holding an Equity Term.  
**Ellen Fealy v. Anna Dore et al.** Equity No. 26,981.

**DECREE.**  
 On consideration of the report of Daniel W. O'Donoghue and F. Elwood Pratt, trustees, filed herein, that they have sold at private sale to Daniel A. Callaghan and John Callaghan, Jr., for the sum of five hundred (\$500) dollars part of lot 17, in square 835, in the city of Washington, District of Columbia, being the southeast corner of said lot, fronting seventeen (17) feet on the alley by a depth of twenty-seven (27) feet, and being more particularly described in said report, it is by the court this 4th day of May, 1908, adjudged, ordered, and decreed that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before 4th day of June, 1908. Provided a copy of this decree be published in The Washington Law Reporter once a week for three successive weeks prior [Seal] to said last mentioned date. **ASHLEY M. GOULD, Justice**. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 19-3t

**P. R. Hilliard, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding a Probate Court.

**This is to Give Notice** That the subscriber, of Baltimore, Maryland, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Patrick Reddington, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of May, 1908. **BRIDGET DURKEN**, 1511 Lower Hackson st., Baltimore, Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,087. Administration. [Seal.] 19-3t

**THIRD INSERTION.**

**Chauncey Hackett and W. R. Tuckerman, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Gabriella K. Jordan, Plaintiff, v. Charles S. Landram**  
**and John A. Broadus, Executors of the Estate of**  
**Constance K. Verner, Defendants.**  
 At Law, No. 50,394.

The object of this suit is to recover \$4,080.00, with interest from November 20th, 1906, on \$2,640.00, and with interest from the 1st day of April, 1905, on \$40, and with interest from the 1st day of each succeeding month, up to and including the 1st day of March, 1908, on \$40 for each month respectively, as damages for a breach of a contract made by the defendants' testatrix, and to have judgment of condemnation of certain property of the defendants levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 29th day of April, 1908, ordered that the defendants appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: **THOS. H. ANDERSON, Justice**. A true copy. Test: **J. R. Young**, Clerk, by **Fred C. O'Connell**, Asst. Clerk. 18-3t



**Legal Notices.**

W. H. Sholes, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Mary B. Cummings, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of April, 1908. S. ELLA CUMMINGS, La Fetra Hotel. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,969. Administration. [Seal.] 18-8t

William A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Cassels, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 29th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 29th day of April, 1908. ELLEN F. CASSELS, 1907 F St. N. W.; AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,199. Administration. [Seal.] 18-8t

Mason N. Richardson, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Washington T. Nailor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of April, 1908. BETTIE F. NAILOR, 1114 O St. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,228. Administration. [Seal.] 18-8t

Lester & Price, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Breuninger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of April, 1908. MAGDALEN BREUNINGER, 468 Mass. ave. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,232. Administration. [Seal.] 18-8t

W. L. Pollard and M. N. Richardson, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court for said District.  
Emma Walker Matthews et al. v. Thomas G. Walker et al. Equity No. 27,465.

The trustee having reported to the court that he had sold at public auction to Henry Freeman, for \$175.00 lot 5 of Johnson's sub. of lots 181, 182, and 183, in Wright and Dole's subdivision of Mount Pleasant, in the county of Washington, District of Columbia, upon the terms of \$316.66 cash, and the balance to be secured by deed of trust, it is, by the court, this 27th day of April, A. D. 1908, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the 1st day of June, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks prior to said last mentioned date, in The Washington Law Reporter and The Evening Star. [Seal] By the Court, HARRY M. CLABAUGH, Chief Justice. A true copy. John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-8t

**Legal Notices.**

Leon Tobriner, Solicitor  
In the Supreme Court of the District of Columbia.  
Mathilde Goeke v. Veronica Schmitt et al.  
In Equity, No. 26,988.

Leon Tobriner, Edward S. Bailey and Albert Sillers, trustees herein, having reported the sale to Claude F. King, for \$2,650.00, of lot 19, in John B. Mattern's subdivision of a part of a tract of land called "Jamaica," the sale to Theodore Nix for \$2,880.00 of lot 18 in John B. Mattern's subdivision of a part of a tract of land called "Jamaica," and to Teresa M. Saul for \$6,850.00, of parts of lots 71 and 72 in Haw's subdivision of Mount Pleasant, all of said parcels of land, being particularly described in the report of said trustees filed herein, April 25, 1908, it is by the court, this 29th day of April, A. D. 1908, ordered that the said sales be ratified and confirmed unless cause to the contrary be shown on or before the 29th day of May, A. D. 1908. Provided a copy of this order be published once a week for three successive weeks before said date in The Washington Law Reporter. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-8t

Jos. A. Burkart and E. P. Morey, Attorneys  
In the Supreme Court of the District of Columbia.  
Daniel N. Clark v. Thomas S. Lewis et al.  
No. 27,618. Equity Docket No. 61.

The object of this suit is to procure a sale in partition of a right of homestead entry for 28 39-100 acres of public land belonging to the estate of Orville B. Lewis, deceased. On motion of the complainant, it is, this 6th day of April, A. D. 1908, ordered that the defendants, Thomas A. Lewis, Frederick Lewis and Charles B. Lewis, of Westfield, Massachusetts, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this notice be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington Post. By the Court: HARRY M. CLABAUGH, Chief Justice. True copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 18-8t

P. A. Bowen, Jr., Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

In re Estate of India Bell, Deceased.  
Application having been made to the Supreme Court of the District of Columbia, holding Probate Court, for letters of administration on the estate of India Bell, deceased, to Philander A. Bowen, Jr. it is ordered, this 28th day of April, 1908, that notice be, and hereby is, given to Bessie Tabbs, Hattie Stouts, and Alvey Shipley, summons for whom was returned by the marshal "not to be found," and to all others concerned, heirs at law and next of kin, to appear in said court on the 1st day of June, 1908, at 10 A. M., to show cause why such application should not be granted. Provided this notice be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 18-8t

E. J. Bernhard, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

In re Estate of Isabella Murphy, Deceased.  
No. 14,883. Administration Doc.  
The executor having reported that he has sold part of lot 1 in square 481, beginning on Massachusetts avenue, 19 feet from the southwest corner of said lot, and running thence easterly with the line of said avenue 21 feet; thence northeasterly at right angles from said avenue 44 feet 6 inches; thence north 88 feet 6 inches, to public alley; thence west 18 feet 7 inches; thence south 16 feet 6 inches; thence 58 feet 6 inches, to the place of beginning, being premises now known as No. 511 Massachusetts avenue northwest, in the city of Washington, District of Columbia, to George Menke, for the sum of forty-three hundred dollars (\$1,300.00) cash, it is, by the court, this 28th day of April, 1908, ordered that said sale be ratified and confirmed, unless cause to the contrary be shown, on or before the 1st day of June, 1908. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. HARRY M. CLABAUGH, Chief Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 18-8t

**Legal Notices.**

Conrad H. Syme and R. G. Donaldson, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. l. a. on the estate of Ellen M. Colton, late the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of April, 1908. CHARLES A. DOUGLAS, Colorado Building; BRAINARD W. PARKER, 611 14th st. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,060. Admn. [Seal.] 18-St

Gordon & Gordon and Erskine Gordon, Solicitors  
In the Supreme Court of the District of Columbia.  
Alice P. Trapier et al. v. Josephine L. Trapier et al.  
Equity, No. 27,662.

The object of this suit is to sell for partition the following described real estate in the city of Washington, in the District of Columbia, to wit: part of square 1282, described as follows: beginning at a point on the north line of Q street 304 feet 8 inches from the northwest corner of Q and 30th streets, and running west with Q street 48 feet 8 inches to a point opposite the middle of the dividing line between the seven and eighth of the houses on the north line of Q street counting west from 30th street; thence north 186 feet; thence east 48 feet 8 inches, and thence to the beginning. On motion of the complainants it is, this 24th day of April, A. D. 1908, ordered that the defendant, Mary Trapier Gadsden, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening [Seal] Star before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 18-St

Oscar Nauck, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James B. Thomas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of April, 1908. MARY E. THOMAS, 711 O st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,150. Administration. [Seal.] 18-St

Chas. H. Bauman, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Christiana Dengler, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 16th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 29th day of April, 1908. CHAS. H. BAUMAN, GEORGE K. BAIER, by Chas. H. Bauman, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,198. Administration. [Seal.] 18-St

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**Legal Notices.**

J. Dawson Williams and B. H. Warner, Jr., Solicitors

In the Supreme Court of the District of Columbia.  
Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Mejia, Their Unknown Heirs, Allenees, and Devisees, if Any or All be Dead. In Equity, No. —.

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, Jesse B. Rank, to sublots 84, and 86 to 88, both inclusive, and the east 6.25 feet of sublot 85 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant, George W. Montgomery, of sublots 35 to 41, both inclusive, and the east 6.25 feet of sublot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in [Seal] The Washington Law Reporter and The Evening Star newspaper before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. april 10, 17; may 15, 22; june 12, 19

Ralston and Siddons, Solicitors

In the Supreme Court of the District of Columbia.  
Patrick O'Toole v. the Unknown Heirs, Devisees and Allenees of Henry Stall.  
No. 27,636. Equity Docket 61.

ORDER OF PUBLICATION.  
The object of this suit is to declare the title to part of original lot numbered seven (7) in square numbered one hundred and forty-four (144) in the city of Washington, District of Columbia, beginning on Nineteenth street 22 feet 10 1/2 inches from the northwest corner of said lot and running thence east 140 feet; thence south 22 feet 10 1/2 inches; thence west 140 feet; and thence north 22 feet 10 1/2 inches to the place of beginning, to be good in fee simple in the complainant by reason of adverse possession thereof for more than forty-eight years. On motion of complainant, it is, this 18th day of April, A. D. 1908, ordered, that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of the date of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and [Seal] Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. apr 17, 24, may 15, 22, june 19, 26

J. Wilmer Latimer, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

Estate of Dixon Fullerton, Deceased.  
No. 15,217. Admn.

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by Angus L. Fullerton, surviving executor therein named, it is ordered, this 30th day of April, A. D. 1908, that Humphrey Fullerton, Mrs. Catherine F. Stillwell, Mrs. Lucy F. Alexander, Mrs. Sarah F. Carter, Madge Fullerton, Mary Fullerton, William F. Fullerton, Mrs. Justin Fullerton St. Clair, Frank Fullerton Brumback, Herman Brumback, Margaret D. Fullerton, William B. Fullerton, Mrs. Margaret F. Marfield, Mrs. L. H. F. Douglas, William D. Fullerton, Dwight L. Fullerton, Reginald H. Fullerton, MacArthur Fullerton, Nannie T. Fullerton, and all others concerned, appear in said court on Tuesday, the 2d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 18-St

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - MAY 22, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Civil Service Commission; Examinations for Appointments Under District of Columbia.

In *Harrison et al. v. Black et al.*, the appeal was from a decree of the court below dismissing a bill filed to enjoin the Civil Service Commission from holding examinations for positions under the District of Columbia, the contention being that such examinations are beyond the scope of the authority of the Commission. The Court of Appeals, in an opinion by Mr. Justice Robb, holds that no ground for relief is presented by the complainants, and affirms the decree appealed from.

#### Seventy-Third Rule; Affidavit of Defense Held Insufficient.

In *Richards v. Street*, the appeal was from a judgment for the plaintiff in an action against an indorser on a promissory note, entered under the 73d Rule for insufficiency of the affidavit of defense. On behalf of the defendant it was contended that the plaintiff's affidavit was insufficient, but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds otherwise. It is also held that the defendant's affidavit was insufficient, and the judgment is affirmed.

#### Personal Injuries; Amendment of Declaration; Negligence.

In *Schneider v. American Bridge Company of New York*, the appeal was from a judgment for defendant, entered upon a verdict directed by the court in an action to recover for personal injuries.

One of the assignments of error was to the refusal of the trial court to permit an amendment of the declaration when the case was called for trial; but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that no error was committed in this regard. The court also holds that the evidence was insufficient to show actionable negligence on the part of the defendant, and that the trial court properly directed a verdict for the defendant.

### Assignment of Justices of the Supreme Court of this District.

Commencing with the October, 1908, term of the Supreme Court of this District, which will convene on Tuesday, October 6, the assignment of the members of the court will be as follows:

Criminal Court No. 1, Mr. Chief Justice Clabaugh.

Criminal Court No. 2, Mr. Justice Anderson.

Circuit Court No. 1, Mr. Justice Stafford.

Circuit Court No. 2, Mr. Justice Gould.

Equity Court No. 1, Mr. Justice Barnard.

Equity Court No. 2, Mr. Justice Wright.

The assignment of justices for the Summer recess will be as follows: Mr. Justice Wright, from Wednesday, July 1, to Friday, July 16; Mr. Justice Anderson, from Saturday, July 17, to Saturday, August 1; Mr. Justice Barnard, from Monday, August 3, to Tuesday, August 18; Mr. Justice Stafford, from Wednesday, August 19, to Thursday, September 3; Mr. Justice Gould, from Friday, September 4, to Saturday, September 19; Mr. Chief Justice Clabaugh, from Monday, September 21, to Monday, October 5.

THE summer examination of applicants for admission to the bar of the Supreme Court of this District will be held in the Georgetown University Law Building on June 11, 12, and 13, 1908. Those desiring to take the examination should file their applications with Mr. Ralph Given, secretary of the committee.

### Amendment to the Common Law Rules.

The following amendment to the Common Law Rules of the Supreme Court of this District was promulgated by the court in general term on May 15, 1908:

"119. A jury summoned for and on duty in any one special term of the court may, from time to time, as occasion shall require, by agreement of the justices presiding in the courts to, and from which, the proposed transfer is to be made, be transferred to any other special term having cognizance of jury trials. Any vacancies occurring in said transferred juries shall be filled as provided in section 208 of the Code."

# Court of Appeals of the District of Columbia.

STANDARD OIL COMPANY, A CORPORATION, APPELLANT,

v.

ABRAHAM BROWN, APPELLEE.

MASTER AND SERVANT; NEGLIGENCE; FELLOW-SERVANT; DANGEROUS CONDITIONS; VARIANCE.

1. The negligence of a fellow-servant will not relieve the master from liability where there is evidence from which the jury can find the master was guilty of negligence and that its negligence contributed to the injury.
2. Plaintiff was employed by defendant to drive an oil-tank wagon, his duties requiring him to take his team from the stable in the early morning and at the close of the day to return the team to the stable and groom it. C., another employee, was charged with the duty of bedding the horses, straw for which purpose was kept in the stable loft. In the floor of the loft was an opening four feet square enclosed by a railing four feet high, and it was the custom of C., continued for a period of nine years, to throw bales of straw through this opening to the stable floor below. Plaintiff, having been in defendant's employ for two weeks, was injured by a bale of straw so thrown. He testified that he did not know of this opening or of the dangerous use made of it. It was held that defendant must be presumed to have known of the long continued and dangerous use made of this opening and to have authorized such use, and that the question of its negligence was properly submitted to the jury.
3. It was the duty of defendant to notify its employees of the dangerous use made of this opening; and the question of whether or not such notice was given held properly submitted to the jury.
4. Where, in such case, the declaration, in the first three counts charged the defendant with negligence in failing to keep said opening guarded so that hay, etc., kept in the loft would not fall through and injure plaintiff while engaged about his duties, evidence that the opening was guarded by a railing four feet high and that a bale of straw was thrown through the opening constitutes a fatal variance; but such defect held to have been cured by the fourth count of the declaration, which charged the negligence as consisting in permitting hay, etc., to be passed through said opening without notice to those employed on the stable floor below.

No. 1836. Decided May 5, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,936, entered upon the verdict of a jury in an action for personal injuries. Affirmed.

Mr. A. L. SINCLAIR and Mr. J. J. DARLINGTON for the appellant.

Mr. CREED M. FULTON, Mr. J. W. COX, and Mr. W. GWYNN GARDINER for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is a suit brought in the Supreme Court of the District of Columbia by the appellee, plaintiff below, to recover from appellant company damages for injuries sustained while in the employ of said company.

It appears that the plaintiff entered the employ of the defendant in January, 1904, as an oil tank wagon driver. His duties required him to take a team and wagon from defendant's barn in the morning, and, after using it during the day in the delivery of oil, return it to the barn in the evening. The plaintiff was required to groom his team in addition to his duties of delivering oil. The barn in which the horses were kept was thirty feet wide and fifty feet long. It contained two rows of stalls, one on either side, with a space of twelve feet between, extending the full length of the barn.

In the ceiling, above the space between the stalls and about the middle of the barn, there was an opening four feet square surrounded on the floor of the loft above by a wooden enclosure or box about four feet high. In the loft was stored baled straw, which was used for bedding the horses.

It further appears that for about nine years, one Coleman had been employed by the defendant, and among his duties was that of bedding the horses; that, during the period of his employment, Coleman had been accustomed to throw bales of straw through the opening in the ceiling from the loft to the floor below. In doing so, it was necessary to lift the bale up to the top of the box or enclosure in the loft and push it over, so that it would fall through the opening. Plaintiff received the injuries complained of on February, 2, 1904, by being struck by a bale of straw dropped by Coleman from the loft through said opening.

Plaintiff, in his declaration, alleges, among other things, as follows: "That on or about the 8th day of February, A. D. 1904, while the defendant was carrying on the said business (dealing in oils) as aforesaid in the manner aforesaid, the plaintiff was then and there in the employment of the said defendant as a laborer, and plaintiff was then and there required and directed by the said defendant, in the performance of his duty as a laborer as aforesaid, to enter said stable of the said defendant in the said city of Washington, District of Columbia, in which said stable there was a loft or storeroom where the feed for the horses was kept, and a certain hole or opening through which said feed passed from said loft or storeroom to the stable below; and it then and there became and was the duty of the said defendant to have the said hole or opening so guarded that the hay and feed from the loft or storeroom would not fall upon the said plaintiff while he was in the exercise of his said duty as a laborer in the stable below, yet the defendant, wholly neglecting its said duty in that regard, then and there, and while the plaintiff was engaged as aforesaid in said stable in the performance of his duty as a laborer as aforesaid, and in pursuance of the instructions and directions of the defendant as aforesaid, did not protect the said hole or opening in any way whatsoever, but wholly disregarding its said duty in the premises, carelessly and negligently allowed a bale of the said hay to fall through the said hole or opening upon the said plaintiff, who was at work in the stable below, and who was wholly ignorant of the said defendant's careless and negligent manner of protection, being otherwise in the exercise of due care and diligence on his part, in consequence whereof said plaintiff was struck by the said bale of hay on the side of his head and neck and shoulder, and on the lower portion of his back, and, by reason of the said bale of hay striking the said plaintiff as aforesaid, he then and there suffered a severe shock to his whole system."

The declaration is in four counts. The foregoing allegation as to the negligence of the defendant is substantially the same in the second and third counts of the declaration. The fourth count, however, in addition charges negligence against defendant as follows: "It then and there became and was the duty of the said defendant to not only have the said hole or opening so guarded that the hay and feed in said loft or storeroom could not pass through said hole or opening and

fall upon and injure those engaged in the performance of their respective other duties in the stable below, but that it became and was also the duty of the said defendant to not permit the said hay and feed to be thus passed through the said hole or opening without proper warning or timely notice to those employed in the stable below, and it also became and was the duty of said defendant to exercise such care and diligence in the matter of employing reasonably skilful, competent, and careful employees to so handle the said hay and feed in transmitting the same from the loft or store-room above to the stable below as not to endanger the lives and limbs of those employed in the stable below; and it then and there became and was the duty of the said defendant to give its employees engaged in handling or placing the hay and feed as aforesaid, as well as those who were employed in the stable below, such proper and necessary instructions with respect to the dangers of passing the hay and feed through the said hole or opening and the performance of their respective duties, as to prevent injury and danger to the lives and limbs of the employees engaged in the stable below; yet the defendant, wholly neglecting its said duties in this regard then and there and while the plaintiff was engaged as aforesaid, and in pursuance of the instructions and directions of the defendant as aforesaid, did not protect the said hole or opening in any way whatsoever, or do any of the other duties that it was called upon to discharge in the premises, but wholly disregarding its said duties in the premises, did so carelessly and negligently allow a bale of the said hay to fall, or to be passed or thrown through the said hole or opening, without any notice or warning or signal or instruction of any kind to plaintiff or by any of its said employees."

The court, at the request of counsel for defendant, instructed the jury, in substance, that it was incumbent upon the plaintiff to show affirmatively by a preponderance of the evidence that the accident was the result of the negligence of the defendant; that such negligence must consist in the failure to do what a reasonable and prudent person would ordinarily have done under the same circumstances; that, when plaintiff entered the employment of defendant company and engaged in the work assigned him, he assumed the ordinary risks, hazards, and dangers incident thereto, not only in so far as they were actually known to him, but also in so far as would have been known to him by the exercise of ordinary care on his part; that, if plaintiff, prior to the time of the accident, by the exercise of ordinary care and prudence would have known of the existence of the hole or opening complained of, and the manner in which straw or other material was thrown through said hole, plaintiff can not recover; that, if the circumstances relied upon by plaintiff to show negligence are consistent with ordinary care on the part of the defendant, plaintiff can not recover; that, if prior to the accident, the plaintiff learned of the existence of the opening in the ceiling, and that bales of straw were frequently thrown through said opening, then plaintiff can not recover; that, if just prior to throwing the bale of straw through the opening, which injured plaintiff, the coemployee Coleman, who threw the bale of straw, warned plaintiff of his intention, and plaintiff, after hearing and understanding the warning, disregarded it, and

walked beneath the opening, then plaintiff can not recover.

The court on its own motion, among other things, instructed the jury that plaintiff was entitled to know the purpose for which the opening in the ceiling was used. "There are two ways that a man can know a thing that he is entitled to know; one by finding it out himself, and the other by having somebody else tell him. This company was under the duty of telling Brown, unless Brown found it out himself before he was hurt. So if you find that Brown did know of the dangerous use to which the hole was put, then there is no aspect of the case which would render the company liable to him."

The court further instructed the jury, in effect, that if, at the time plaintiff was injured, he did not know that danger existed in the barn, it is for the jury to determine from the evidence whether or not it was negligence for the company not to have informed him of the existence of the opening in the ceiling and the use made of it. If the jury find that the situation at the barn was such that defendant was justified in believing that any man would see the conditions there existing himself, the defendant was not required to acquaint plaintiff with the conditions there existing, but, if you find that the situation was such that the company was not justified in believing that Brown would find out for himself immediately that the use was dangerous, and that this use was made of the hole, then the company would be held to be negligent in failing to inform the plaintiff of it, and would be liable for the injuries sustained.

The jury were further instructed to the effect that no liability would attach to the defendant by reason of the injuries sustained by plaintiff if he was injured exclusively through the negligence of Coleman. The law will not hold defendant liable for an injury so caused alone by the negligence of a fellow-employee. The court summed up its charge as follows: "If you find that at the time he was injured Brown did not know that this hole was used for casting down hay, and if you find that the situation of the stable, the danger of the openings, the times of the use, and the like, were such as not to justify the company in believing that Brown would know that for himself, then the company was under the duty of telling him. If they did not tell him they would be negligent, and responsible for his injuries. That is the only theory in the case on which the company would be liable."

There was evidence adduced at the trial to show that plaintiff had never been advised by the defendant, or any of defendant's employees, either of the existence of the opening in the ceiling, or the purpose for which it was used. Plaintiff testified to this effect, and further, that during the period of his employment—less than two weeks—he was required to leave the barn with his wagon to deliver oil at 6 o'clock in the morning, and that he did not complete the delivery of the oil and return to the barn until 6 or 7 o'clock in the evening. At the time of year that he was employed—in January—he left the barn before daylight in the morning and returned after dark in the evening. It also appears that the barn was poorly lighted, there being but a small oil lamp at each end of the passageway between the stalls.

The witness Coleman testified that he not only notified plaintiff of the use made of the opening in

the ceiling, but warned him before throwing down the bale of straw that injured him. He testified in part as follows:

"Q. Now state whether or not, prior to that time, you told Brown about that hole, and what it was used for? A. Yes, sir; I stated to Mr. Brown—

"Q. When? A. When he first came there, like I would any other new man. Every new man that came along I told him about the hole and what it was used for.

"Q. Yes. A. Not because there was any imminent danger there. There was nothing dangerous about that hole at all, because it was used to throw down straw, and I hollered always before I would throw anything down. I had a knack of hollering if I would throw anything down, and I would holler even if I threw down only a little dust to look out below. I had no way to get dust out of that place. I would carry the dust to the north door to sweep it out.

"Q. Tell us as near as you can what you said to Brown about this hole at the time he started to work for the Standard Oil Company? A. At the time he started to work?

"Q. Yes. A. Oh, I pointed him to the hole.

"Q. You pointed out the hole to him? A. Yes, sir; I pointed out the hole, and told him what it was used for.

"Q. What did you tell him that it was used for? A. To throw down straw, sometimes, and any time that I hollered, to look out below; and I think any man that ever worked there will tell you the same, that I have told him what that hole was for.

"Q. The hole was used regularly for the purpose of throwing down straw for bedding for the horses, was it not? A. Yes, sir; that is what they used it for.

"Q. And how long had you used it for that purpose? A. I used it all the time I was there."

Plaintiff, in his testimony, denies that Coleman either called his attention to the hole, or explained its use, or gave him any warning on the evening of the accident. Coleman is not corroborated by any of the employees, as to his custom of calling out to persons below before throwing straw through the opening.

It is contended by counsel for defendant that the court erred in refusing to instruct the jury to return a verdict for defendant. It is insisted that this instruction should have been given for the reason that there is a fatal variance between the averments of plaintiff's declaration and the proof. There are four counts in the declaration. In the first three the defendant is charged with negligence in not keeping the hole or opening in the ceiling of the barn so guarded that hay and feed kept in the loft would not fall through upon plaintiff while he was engaged in the proper performance of his duties. In other words, these three counts charged defendant with having failed to properly protect the hole or opening, and having allowed a bale of hay, by reason of such improper protection, to fall through said hole or opening upon the plaintiff. There is clearly a fatal variance here, for the evidence discloses that the hole or opening in the ceiling was protected or guarded in the loft by a box extending around it to a height of four feet. The evidence is uncontradicted to the effect that it was impossible for anything from the loft to go through the opening until it was lifted over this box and thrown down. Plaintiff's whole case

rests upon evidence to the effect that one Coleman, a fellow-employee with plaintiff, threw the bale of straw through the opening that caused plaintiff's injury. Hence, it will be observed, that what is complained of in the first three counts of the declaration, the improper guarding of the opening to prevent feed and hay from falling through, was not, according to the evidence, the cause of the accident.

We think, however, that this defect is cured in the fourth count of the declaration. Here, it is charged that the negligence of the defendant consisted in permitting hay and feed to be passed through the hole or opening without notice to those employed in the stable below; that defendant failed to give its employees proper instructions with respect to the danger of the situation, and allowed a bale of hay to be "thrown through the said hole or opening, without any notice, or warning, or signal, or instruction of any kind to plaintiff." While the allegations of this count are not as clear and explicit as the rules of good pleading demand, we think they are sufficient to charge defendant with negligently permitting the accident to occur through the agency of one of its servants. We do not deem it essential for plaintiff, in his declaration, to name the agency that caused the accident, if it is alleged that defendant was directly responsible for the infliction of the injury. The allegation that defendant caused the bale of straw to be thrown through the hole or opening is sufficient. So far as liability is concerned, if the accident resulted from the negligence of defendant, it is immaterial if the bale was thrown by an employee of defendant, so long as it is alleged that it was caused to be thrown by the defendant.

It is further insisted that the jury should have been instructed by the court to return a verdict for defendant because the accident in question was not caused by the negligence of the defendant but resulted either from the contributory negligence of the plaintiff, or from the negligence of plaintiff's fellow-servant, Coleman. We are of the opinion that the jury was fully justified in finding from the evidence that the use made of the opening, in throwing bales of straw through it to the floor below, was a dangerous use. It was a condition existing in the barn, and one which, if permitted to continue with the knowledge of the defendant, would, in the absence of contributory negligence on the part of plaintiff, render defendant liable for the injury sustained by plaintiff.

Numerous authorities have been cited by counsel for defendant to the effect that there is no duty imposed upon an employer to anticipate breaches of duty on the part of his employees; that the law presumes that servants will obey the law and faithfully perform their duties; that, while the defendant was bound to use ordinary care and provide a reasonably safe place for plaintiff to work, it was not required to guard the place against negligent and unauthorized use by one of its servants; that when one enters the employment of another he takes upon himself the ordinary risks of the negligent acts of his fellow-servants in the course of his employment; that an employer is not required to instruct an employee in regard to dangers which can only result from the negligence of a fellow-servant, and that the servant must make a reasonable use of his senses, and if a condition is apparent which of necessity must be dangerous, he is required to exercise reasonable and ordinary care



in relation thereto. These principles are all so elementary that it would serve no good purpose to discuss them, further than to suggest that we do not think they apply to the facts in this case.

Plaintiff was not injured as the result of a single breach of duty on the part of his fellow-servant Coleman. For nine years, Coleman had been in the employ of defendant, and for most of the time had been engaged in the work he was doing at the time plaintiff was injured. The throwing down of the particular bale of straw that injured plaintiff was not the sole negligent and unauthorized act of Coleman; it was what, to the knowledge of defendant, he had been doing for years. The continuous and repeated acts of Coleman were what rendered the place dangerous. While defendant would not be chargeable with negligence if the injury of plaintiff had resulted from Coleman, without the knowledge or permission of defendant, throwing a single bale of straw through the opening, defendant will be presumed to have known of the continued and accustomed use which was made of the opening and to have authorized it to be so used. The distinction consists in defendant's knowledge of the dangerous use. It will not be contended that defendant would be liable if it had instructed Coleman to only throw loose straw through the opening, and, that being the customary manner of conveying straw from the loft to the floor below, Coleman, on this particular occasion, had violated instructions, departed from the custom, and thrown down the bale of straw. That would present a different case from the one before us, yet that is the case presented by most, if not all, of the authorities cited by counsel for defendant.

Defendant, if guilty of permitting a dangerous condition to exist in its barn, can not relieve itself from responsibility by hiding behind the negligence of Coleman. The negligence of a fellow-servant will not relieve the defendant from liability where there is evidence from which the jury could find that the defendant was guilty of negligence and that its negligence contributed to the injury. In *Railroad Co. v. Cummings*, 106 U. S., 705, it is said: "If the negligence of the company contributed to—that is to say, had a share in producing the injury—the company is liable, even though the negligence of a fellow-servant was contributory also. If the negligence of the company contributed to, it must necessarily have been an immediate cause of the accident, and it is no defense that another was likewise guilty of wrong." In *Rogers v. Layden*, 127 Ind., 50, the court said: "The law can not be reproached with such injustice as is involved in the assertion that a wrongdoing employer may shelter himself behind the act of his employee, who, like himself, has been guilty of an actionable wrong." The defect in defendant's position consists in attempting to attribute a single act of negligence to Coleman; in other words, insisting that Coleman, by a single negligent act of which defendant could not be expected to have knowledge or take notice, converted the barn from a safe to a dangerous place. But that is not this case. Here Coleman was doing what he had been accustomed to do, as he testified, with the knowledge and approval of defendant's local superintendent. The danger consisted in the customary, and not the exceptional, use made of the opening in the ceiling.

Under the state of facts here presented, we are

of the opinion that it was the duty of defendant to notify its employees of the unusual and dangerous use made of the opening in the ceiling. While plaintiff testified that he had never seen the hole, we think if he had, and had been informed, as the evidence of Coleman implies, that bedding for the horses was thrown down through it, he would have been justified in assuming, in the absence of specific instructions or knowledge to the contrary, that the material would be thrown down in such a manner as to insure the safety of persons below. There is no evidence to the effect that plaintiff was informed of the careless and dangerous manner in which the straw was thrown through the opening. Neither is there any evidence that plaintiff was ever in the barn, prior to the time of the injury, when straw was so thrown down, so that he could have observed the reckless manner in which Coleman performed his work. We are forced to the conclusion that defendant must not only be presumed to have known, but that it did know, of the manner in which its servant Coleman was accustomed to use the opening. This being established, in the absence of contributory negligence on the part of plaintiff, liability attaches.

The case of *Railway Co. v. Dixon*, 194 U. S., 338, is especially relied upon by counsel for defendant as being decisive of this case. We find no difficulty in distinguishing it. There Dixon was injured while on duty in the operation of the trains of the railroad company. He was injured as the result of a mistake of an operator and the train dispatcher, and it was held that the company was not liable. The distinction between this case and the one at bar is clearly stated by Mr. Justice Brewer as follows: "Here the company had adopted reasonable rules for the operation of all its trains. No imputation is made of a want of competency in either the train dispatcher or the telegraph operator. So far as appears they were competent and proper persons for the work in which they were employed. A momentary act of negligence is charged against the telegraph operator. No reasonable amount of care and supervision which the master had taken beforehand would have guarded against such unexpected and temporary act of negligence. Before an employer should be held responsible in damages it should appear that in some way, by the exercise of reasonable care and prudence, he could have avoided the injury. He can not be personally present everywhere and at all times, and in the nature of things can not guard against every temporary act of negligence by one of his employees." In that case the court exonerates the company for reasons that do not appear in this case. There a momentary act of negligence on the part of an employee occurred of which the company could not have had notice. Here it was not a momentary act on the part of Coleman. He was doing what he had done for years. There is no evidence to the effect that he was not a competent person to perform the duties assigned him. It must, therefore, be presumed that his custom of throwing baled straw through the opening in the ceiling of the barn was a custom established with the knowledge and consent of defendant. If Dixon in the case just cited had been injured as the result of a dispatch sent with the approval of the railroad company, or in accordance with an established negligent custom in the operation of the road, there would have been no question of the liability of the company.



And that is the case at bar. We can not view it from any other standpoint.

It is well settled, that even though the master is negligent in not giving his servant instructions as to the dangerous conditions attached to his employment, if the servant, through others, or through his own observation, receives such information, and is afterwards injured, the master is not liable. In that case, the servant would be chargeable with contributory negligence in voluntarily and knowingly placing himself in a dangerous position where accident was liable to occur. In the case at bar, the question of the contributory negligence of the plaintiff was fairly presented to the jury. The evidence discloses that the use of the opening in the ceiling of the barn was a regular one, and, therefore, became one of the dangerous conditions attached to the employment of those assigned to perform work in the barn. The whole question presented to the jury was, whether plaintiff had been informed of this danger, or had been so situated that he had an opportunity to observe the danger. If he had, and exposed himself to the danger, he was guilty of contributory negligence. If not, defendant was guilty in not informing him of the existence of this dangerous condition. This question was fairly presented to the jury, under the instructions of the trial court, and the jury found in favor of plaintiff. We think the evidence is sufficient to support the verdict.

Defendant complains of the following instruction: "The jury are instructed that the plaintiff, by entering the employment of the defendant company, and engaging in the work assigned to him, assumed the ordinary risks, hazards, and dangers incident thereto, not only so far as they were actually known to him, but also so far as they would have been known to him by the exercise of ordinary care on his part; and if the jury believe from the evidence that the plaintiff, prior to the time he was struck by the bale of straw mentioned in the evidence, knew, or by the exercise of ordinary care and prudence would have known, of the existence of the hole or opening complained of, and the manner in which the straw or other material used in the defendant's stable was thrown down from the loft through said hole or opening into the stable below, then the plaintiff can not recover, and the verdict should be for the defendant." While we think this instruction fairly states the law as to assumed risks, if there was any error at all, it was one in favor of defendant and against the plaintiff. The rule on this point is clearly stated in *Railroad Co. v. McDade*, 191 U. S., 64, as follows: "The charge of the court upon the assumption of risk was more favorable to the plaintiff in error than the law required, as it exonerated the railroad company from fault if, in the exercise of ordinary care, McDade might have discovered the danger. Upon this question, the true test is not in the exercise of care to discover the dangers, but whether the defect is known or plainly observable by the employee."

From a careful review of the record in this case, we are of the opinion that the evidence is sufficient to support the verdict, and that the charge of the court was most favorable to the defendant. We find no prejudicial error. The judgment is affirmed with costs, and it is so ordered.

Affirmed.

## Court of Appeals of the District of Columbia.

BURTON MACAFEE, APPELLANT,

v.

MARY Z. L. HIGGINS ET AL.

WILLS; OPINION EVIDENCE; DEPOSITIONS, OBJECTIONS TO; APPEALS.

1. It is not reversible error to permit a lay witness, after fully disclosing in his testimony his means of knowledge, to state whether in his opinion, based on what he observed of him, the testator was at the time of executing the will "capable and of sufficient mental capacity to understand and execute a valid deed or contract."
2. Under sec. 1058, Code D. C., objections to questions and answers in a deposition must be noted at the time the deposition is taken or within ten days after the return thereof; and an objection made for the first time at the trial, more than ten days after the return of the deposition and after it has been read to the jury comes too late.
3. Where the testimony discloses that a witness, in addition to having frequently observed and conversed with the testator, had personal knowledge of the record of the testator as to efficiency as a clerk in the Pension Office, he is entitled to consider such knowledge in reaching a conclusion as to the testator's mental capacity.
4. Where, in a will contest, the evidence on the issue of mental capacity is conceded to be sufficient to require submission of that issue to the jury, and no error is shown in respect of that issue, and the record fails to disclose the improper admission of any testimony on the other issues tending to the prejudice of the caveatee, the finding of the jury on the issue of mental capacity will be sufficient to support a judgment against the will, and assignments of error relating to the issues of fraud and undue influence will not be considered.

No. 1873. Decided May 5, 1906.

APPEAL by defendant from an order of the Supreme Court of the District of Columbia, holding the Probate Court, No. 14,274, denying probate of a paper offered as a last will and testament. Affirmed.

Mr. ANDREW WILSON and Mr. N. W. BARSDALE for the appellant.

Mr. RICHARD A. FORD, Mr. R. P. BARNARD, Mr. GUY H. JOHNSON and Mr. WALLACE D. MCLEAN for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from an order denying the probate of the will of J. Howard Larcombe, who died December 12, 1906, leaving surviving him one daughter, Mrs. Mary Z. L. Higgins, as his only heir at law and next of kin. The will was duly executed, and reads as follows:

"I, J. Howard Larcombe, of the District of Columbia, do make and publish and declare this to be my last will and testament; hereby revoking all other wills and testaments heretofore made by me, and ratifying and confirming this, and none other to be my last will and testament.

"First, I do will and direct that all my just debts be promptly paid.

"Second, I do hereby give, bequeath and devise all my life-insurance, personal, mixed, and real property, now owned or after acquired, of which I die entitled, or seized and possessed, to and unto Burton Macafee, with all my right title and interest therein, to have and to hold the same, himself and his heirs forever subject to the hereinafter named obligation:—that is to say, the same to be his absolutely, to handle and to manage as he sees fit, and to pay ninety per cent of the net annual income, divided into two equal parts, to

my children, one of those equal parts to my daughter Mary Z. L. Higgins absolutely and free from any interest, use or control of any husband that she may [have]\* at any time, and the other of these equal parts to my son, Howard Shoch Larcombe, or to the widow of the said son, if his present wife survives him.

"Third, I request, but do not direct, that said Burton Macafee purchase the mortgage now upon and standing against the farm near Beltsville in the name of my deceased wife, provided my said son and daughter agree amicably to a division of said farm between them; and I also request him, Burton Macafee, to maintain my rights without compromise to the property in litigation in Pennsylvania.

"Fourth, I do hereby appoint and constitute Burton Macafee to be the executor of this my last will and testament, and do further will and direct that he shall not be required to give any bond for the performance of his duties as executor.- In case of the death of the said executor, Burton Macafee, or his refusal to act, then, and then only, I hereby appoint 'The Washington Loan and Trust Company' my executor.

"Fifth, I do hereby authorize my said executor to sell and dispose of my real estate, and to give a good and valid conveyance thereof, the purchaser in no way to see to the application of the purchase money.

"Sixth, I repeat, it is my will and intention that the provisions of this my last will and testament shall be effectual and sufficient to pass all rights and estate, real, personal, and mixed, of which I may be seized and possessed, or have any right or claim at the day and date of my death. And further, I, J.- Howard Larcombe, do hereby declare my mind and will to be that if either of my children or the husband of my daughter, shall in any manner controvert my gift, devise disposition or appointment herein by me made, or shall refuse to stand or abide by the same, or shall refuse or neglect to do or to execute any reasonable or proper writing or act for the confirming, establishing or carrying into execution of the same, then such son or daughter, or husband of my daughter, who controverts any gift, devise, disposition or appointment by me hereinbefore made, or who shall refuse or neglect to confirm the same, he, she, or the wife of him, shall be deprived of and lose all benefit and advantage of whatsoever is, in or by this will, or any part thereof given, or appointed or settled in annual payment for his or her respective use and benefit.

"In witness whereof I have hereunto set my hand and seal this twenty seventh day of July nineteen hundred.

"J. HOWARD LARCOMBE. (Seal.)"

This will was anonymously sent by mail to the register of wills on December 14, 1906. Subsequently, on February 21, 1907, Burton Macafee, appellant herein, filed a petition for the probate of said will, setting forth in said petition that the only personalty situated within the jurisdiction of the court consisted "of a few books, some little furniture, and a small amount of money." Thereupon a caveat was filed by the daughter, Mrs. Higgins, alleging mental incapacity and that the execution of the will was procured through the fraud and undue influence of said Macafee.

To this Macafee made answer, averring testamentary capacity and denying, upon information and belief, the charges of fraud and undue influence alleged against him in said caveat.

Thereupon the following issues were framed for trial by jury:

"1. Was the paper writing executed in due form of law as and for the last will and testament of J. Howard Larcombe?

"2. Was the said paper writing procured from the said J. Howard Larcombe by undue influence of Burton Macafee, or of any other person or persons?

"3. Was the said paper writing procured from the said J. Howard Larcombe by fraud of Burton Macafee, or of any other person or persons?

"4. Was the said J. Howard Larcombe, at the time of the execution of said paper writing, of sound and disposing mind and capable of executing a valid deed or contract?"

At the trial thirteen witnesses were produced by the caveator, almost all of whom were entirely disinterested, and all of whom testified to the mental incapacity of the testator prior to and at the time he executed said will. It appeared from their testimony that the testator, when he executed this will, was more than 80 years old, and that he had become infirm in mind and body and incapable of transacting business. All these witnesses had been intimately acquainted with the testator, and their testimony was positive and convincing. There was testimony tending to establish the relation of attorney and client between testator and Macafee prior to and at the time of the execution of the will, and also testimony from which it might have been inferred that Macafee was instrumental in drawing said will. It further appeared that at the time of the execution of the will the testator owned an undivided interest in real estate in Blair County, Pa., 9 shares of stock in the Pennsylvania Railroad Co., 26 shares of stock in the Washington Gas-Light Co., and 62 shares of stock in the Metropolitan Coach Co.; that he had a life interest in a farm near Beltsville, Md., and was the holder of a benefit certificate for \$2,000, issued by the United Order of the Golden Cross, and in which his daughter, Mrs. Higgins, was named as beneficiary; that upon the execution of the will transfers of this property commenced to be made to appellant, which continued until within about seventeen months thereafter the appellant had acquired all of said property. Certain letters from Mrs. Higgins to appellant, in which she charged appellant with bad faith in his dealings with her father, and appellant's replies thereto, were introduced in evidence.

The record discloses that at the close of the case "counsel for caveatee said that he made no motion to direct a verdict on the issue of mental capacity as he supposed that there was sufficient evidence to go to the jury on that issue."

Several specifications of error have been assigned, but only two of these relate to the issue of mental capacity. We will first consider these two assignments.

A witness named William J. Brooks testified by deposition that he was formerly appointment clerk in the Pension Bureau and assistant chief clerk in that office from 1897 to 1903, and had known the testator for twenty years; that after 1897 he saw the testator almost daily, and from that time observed his physical weakness; that

\*Word enclosed in brackets erased in copy.

from frequent conversations with testator witness noticed his memory was failing and that he could not center his mind upon any subject of conversation, and that "his mental and physical condition in July, 1900, from observation and conversation had gotten decidedly worse." Thereupon witness was asked from what he observed of the testator "would he say that in July, 1900, he was capable and was of sufficient mental capacity to understand and execute a valid deed or contract." To this objection was interposed, which being overruled, an exception was noted. It is here contended by appellant that the court erred in permitting the witness to testify as to his opinion of testator's capacity to execute a deed or contract. Inasmuch as the testimony of the witness fully disclosed his means of knowledge as to the mental condition of the testator and his reasons for reaching the conclusion stated, we do not think it was reversible error for the court to permit an answer to this question. The witness was not a lawyer, and it is not probable that the jury attached greater weight to his answer than it would had he stated that in his opinion the testator was of unsound mind at the time of the execution of the will.

The second assignment of error relating to the issue of testamentary capacity challenges the action of the trial court in refusing to direct the jury to disregard the above opinion of the witness Brooks as to the mental condition of the testator, because, as appellant contends, it was based partly upon hearsay testimony. As above stated, the testimony of this witness was taken by deposition. During the taking of such testimony the witness stated that about 1898 the office force was reduced and Larcombe was among the number recommended for dismissal; that witness protested "notwithstanding he (Larcombe) was unable to render any efficient service, because of the good service he had rendered the Union as a telegrapher in Alabama during the war." During his cross-examination by counsel for caveatee, the witness stated that his conclusion as to the mental capacity of the testator was not based entirely upon conversation with the testator, but upon the reports of the chief of his division, which constitute public records in the Pension Bureau, and which came to the witness in his official capacity as assistant chief clerk, and that his opinion was based on observation and conversation and Larcombe's "record as a clerk in the Pension Office."

There is no merit in this assignment. Section 1058 of the Code requires that objections to questions and answers must be noted at the time of taking a deposition or within ten days after the return thereof. In this case no objection whatever was made until after the reading of the deposition to the jury. Moreover, the testimony shows that the witness was personally familiar with the standing of the testator in the office as to efficiency, which knowledge the witness was entitled to consider in reaching a conclusion on the question of mental capacity.

Inasmuch as practically all the direct testimony of the caveator related to the issue of testamentary capacity, which issue without error was submitted to the jury, and inasmuch as a careful examination of the record fails to disclose the improper admission of any testimony on the other issues which might have tended to the prejudice of the caveatee before the jury, we find it unnecessary to

consider the assignments of error relating to those issues. "The verdict on the issue of testamentary capacity being sufficient to support the judgment, it would not avail appellants if error could be shown on the other." *Morgan v. Adams*, 29 App. D. C., 207; 35 Wash Law Rep., 190.

Finding no error requiring the verdict on the issue of testamentary capacity to be set aside and a new trial of that issue ordered, the judgment is affirmed, with costs.

Affirmed.

**Brokers.**—An owner of property, who, after agreeing to pay a broker a certain sum to sell it at a certain price, and receiving through him an offer for most of the property at a slightly less price, fraudulently informs the broker that he will keep the property, and settles for his services for a nominal consideration, after which he negotiates a sale with the customer for a sum which, together with that received for the balance of the property, brings more than the stipulated amount, is held, in *Bowe v. Gage* (Wis.), 12 L. R. A. (N. S.), 265, to be liable for the sum promised the broker.

**Carriers.**—A motorman in charge of a street-car is held, in *Strong v. Burlington Traction Co.* (Vt.), 12 L. R. A. (N. S.), 197, not to be negligent toward a passenger, as a matter of law, merely because he fails to sound his gong to warn of the approach of the car one driving on the highway who turns his horse across the path of the car, causing a collision and the injury of the passenger.

A railroad flagman who receives as compensation for his services a certain sum and fourteen transportation tickets to carry him to and from his home per week is held, in *Enos v. Rhode Island Suburban R. Co.* (R. I.), 12 L. R. A. (N. S.), 244, to be, after his day's work is done and he has boarded a car for home, being required to pay a ticket for his transportation, a passenger, and not a fellow-servant with those engaged in operating the car.

A carrier which has received property for shipment is held, in *Switzler v. Northern P. R. Co.* (Wash.), 12 L. R. A. (N. S.), 254, not to be bound to recognize the demands of a stranger to control the property, on the ground that it was procured from him by fraud.

A passenger negligently expelled, because of failure to produce his ticket, from a train at a flag station where there is no shelter and with the surroundings of which he is not familiar, after dark on a cold and stormy night, is held, in *Tilburg v. Northern C. R. Co.* (Pa.), 12 L. R. A. (N. S.), 359, not to be per se negligent in attempting to reach shelter at a station recently passed, by walking along the railroad track, rather than by seeking a highway.

The right of a consignee to refuse to receive a shipment, and to throw it upon the hands of the carrier, merely because of the latter's unreasonable delay in transportation, is denied in *Chesapeake & O. R. Co. v. Saulsberry* (Ky.), 12 L. R. A. (N. S.), 431.

**Master and Servant—Risks Assumed by Servant.**—A torpedo placed on a railroad track held not an obstruction, the placing of which on the track constitutes negligence as to an employee of the railroad. *Mize v. Louisville & N. R. Co.* (Ky.), 105 S. W. Rep., 908.

### The Binding of Law Books.

The committee on binding of the American Association of Law Libraries is advocating the use of cloth or buckram instead of law-sheep for the binding of law books; and it is gratifying to note that a number of publishers are adopting the suggestion. Mr. Edwin Gholsox, librarian of the Cincinnati Law Library Association, has given much attention to the matter, and presents the argument in favor of a cloth or buckram binding, based on his personal experience, as follows:

"The law libraries of the country are now facing a very serious problem. The income of most of them is limited, hence, if the larger part of their available funds are spent for rebindings, the number of new books which they are able to purchase is correspondingly decreased, and this, of course, works to the detriment of the publishers.

It is no exaggeration for me to say, for it is based upon my own experience here, that approximately one-fourth of the income of every large law library in the country is absolutely and needlessly wasted, and that this sum might be saved to them and put to a much better use, if the law book publishers would only adopt a good grade of cloth or buckram binding instead of the "law-sheep" they now use. The life of the best of this law-sheep, exposed on open shelves to the action of an atmosphere laden with the gases thrown off in the combustion of either soft or hard coal, averages less than four years, while a good article of cloth binding, subject to the same conditions, will last indefinitely. Some eight years ago, when I took charge of this library, my first innovation was to substitute a heavy canvas instead of the law-sheep that had been used on our rebindings. Out of the ten thousand volumes bound in this material now on our shelves only one single volume has gone back to the bindery, and this upon a book which was subjected to the most constant and severe use. Of the new books which have come in during this same period, and which were bound in law-sheep, fully one-fifth have already had new bindings and hundreds of others are in a condition requiring it."

**Carriers—Damages for Lost Freight.**—Measure of damages from loss of freight, in absence of special circumstances, held to be value of property at destination, less cost of carriage; value at destination being market value, or, if none, then the reasonable value. *Wilson v. St. Louis & S. F. R. Co. (Mo.)*, 108 S. W. Rep., 612.

**Carriers—Delay of Shipment.**—Notice to an initial carrier that goods are to be used for a certain purpose at the place of delivery is not notice to the connecting carrier of such use so as to be a basis of a recovery of loss of profits caused by delay in shipment. *Brand v. Illinois Cent. R. Co. (Ky.)*, 108 S. W. Rep., 356.

**Carriers—Compromise and Settlement—Validity.**—In an action against a railway company for killing plaintiff's intestate, evidence held to sustain a finding that a payment by the railway company and receipt therefor by plaintiff was not a settlement. *Louisville & N. R. Co. v. Hoskins' Admr. (Ky.)*, 108 S. W. Rep., 305.

**Master and Servant—Action for Death of Servant.**—In an action against a city for the death of decedent while working in a city sewer, caused by the caving in of the curbing, evidence held to show that decedent had charge of the construction of the curbing. *Winkleman v. City of Adrian (Mich.)*, 115 N. W. Rep., 461.

**Master and Servant—Acts Constituting Negligence.**—Act of employer in knowingly misleading an inexperienced employee by statement that there was no danger in the employment held negligence. *Schmitt v. Hamilton Mfg. Co. (Wis.)*, 115 N. W. Rep., 353.

**Master and Servant—Contributory Negligence.**—That a section foreman attempted to remove a hand car from a track in front of an approaching train warrants an inference that his motive was to prevent a derailment of the train. *Houston & T. C. R. Co. v. Burnett (Tex.)*, 108 S. W. Rep., 404.

**Master and Servant—Safe Place to Work.**—The employer must provide his employees with a reasonably safe place to work, and especially warn or protect them against hidden dangers, and for his negligence in this respect they may recover. *Black Diamond Coal & Mining Co. v. Price (Ky.)*, 108 S. W. Rep., 345.

**Bills and Notes—Bona fide Purchasers.**—Where a purchaser of a note has knowledge of defenses before he pays for it, he is not a bona fide purchaser, though the note may have been delivered to him before such knowledge. *Walters v. Rock (N. D.)*, 115 N. W. Rep., 511.

**Street Railroads—Injury to Pedestrian.**—In an action for injuries to a pedestrian by a street-car, plaintiff's negligence held not excused by the fact that the car was equipped with a single incandescent headlight instead of a searchlight in use on other cars. *Beirne v. Lawrence & M. St. Ry. Co. (Mass.)*, 83 N. E. Rep., 359.

**Street Railroads—Contributory Negligence.**—It is not contributory negligence for a person in crossing the street to assume that an approaching street-car a block away is not running at an illegal rate of speed. *Powers v. Des Moines City Ry. Co. (Iowa)*, 115 N. W. Rep., 494.

**Negligence—Proximate Cause.**—Where an act of negligence has been committed, resulting in damage, the party committing it will be responsible for all the consequences that naturally and reasonably flow therefrom. *Louisville & N. R. Co. v. Daugherty (Ky.)*, 108 S. W. Rep., 336.

**Street Railroads—Discovered Peril.**—In an action against a street railway company for personal injuries, an instruction held not subject to the objection that it did not base defendant's liability on the discovery of plaintiff's peril. *South Covington & C. St. Ry. Co. v. Eichler (Ky.)*, 108 S. W. Rep., 329.

**Partnership—Joint and Several Liability.**—If a judgment be obtained against a partnership, the judgment creditor is not required to first exhaust the partnership property before he can levy upon the outside or separate property of a partner. *Webb v. Gregory (Tex.)*, 108 S. W. Rep., 478.

**Partnership—Liability of Retiring Partner.**—A buyer of a partner's interest in a firm under an agreement binding the partner to pay firm debts held required to maintain actions for damages for wrongful attachments of the property. *Davis v. Siak (Tex.)*, 108 S. W. Rep., 472.

**Carriers—Injury to Alighting Passengers.**—What would constitute a high degree of care in starting a street-car stopped to turn a switch where passengers were not expected to alight might not constitute such a degree of care in starting a car stopped at a place for passengers to get aboard and alight; the amount of the diligence required depending on the hazard involved. *Rapid Transit Ry. Co. v. Strong*, (Tex.), 108 S. W. Rep., 394.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Edwin C. Dutton, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick Luck, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1908. EDWIN C. DUTTON, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,145. Administration. [Seal.] 21-St

Horace R. George, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret W. Huyett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of May, 1908. EMMA S. HUYETT, LAURA V. HUYETT, 119 Tenn. ave. n.e. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,211. Admn. [Seal.] 21-St

T. L. Jeffords, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Laura L. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1908. LAURA L. PAUL, 79 R. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,049. Administration. [Seal.] 21-St

### Legal Notices.

E. H. Thomas and Jas. Francis Smith, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Assessment of Benefits Resulting from the Extension of W and Adams Streets, Northwest, in the District of Columbia.  
District Court, No. 769.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress, approved February 26th, A. D. 1907, entitled "An Act for the extension of W and Adams Streets Northwest," have filed a petition in this court praying that a jury of seven judicious, experienced, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess, as benefits resulting from the extension of W and Adams streets northwest, in the District of Columbia, east to North Capitol street, said W street to be eighty feet wide, and said Adams street to be ninety feet wide, the sum of four thousand (\$4,000.00) dollars together with the cost and expenses of these proceedings upon any and all pieces and parcels of land which the said jury may find will be benefited by the said extensions, except the lands of the Prospect Hill Cemetery Company, as provided for in and by the aforesaid act of Congress. It is, by the court, this 19th day of May, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 5th day of June, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and on three secular days in The Washington Evening Star, The Washington Herald and The Washington Times, newspapers published in the said District, before the said 5th day of June, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal or his deputies, upon such of the owners of the land to be assessed herein as may be found by the said Marshal or his deputies within the District of Columbia and upon the tenants

[Seal] and occupants of the same before the said 5th day of June, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 21-St

E. A. Jones and G. C. Shinn, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devisees, and Allenees of such of them as are dead; and the Unknown Heirs, Devisees, and Allenees of Julianna Barry, Deceased.

In Equity, No. 27,648.

#### ORDER OF PUBLICATION.

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and allenees of such of them as are dead; and the unknown heirs, devisees, and allenees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington [Seal] Ingot Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 29; June 19, 26; July 24, 31.

Justice blanks of every description for sale at this office.

**Legal Notices.**

C. Clinton James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Robert T. Pywell, Deceased.  
No. 15,163. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Martha E. Pywell, it is ordered, this 20th day of May, A. D. 1908, that Denzel Pywell, and all others concerned, appear in said court on Monday, the 22d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY

[Seal] M. GOULD, Justice. Attest: James Tanner,  
Register of Wills for the District of Columbia,  
Clerk of the Probate Court. 21-St

Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jerusha M. Holton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. FREDERICK A. HOLTON 2125 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,376. Administration. [Seal.] 21-St

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles W. Milbourne, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. EDITH V. CARRUTHERS, 3840 1/2 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,282. Administration. [Seal.] 21-St

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick Roeder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. FREDERICK A. FENNING, Century Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,235. Administration. [Seal.] 21-St

Daniel W. O'Donoghue, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Bernard Mullen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1908. JULIA MULLEN, 618 8th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,275. Administration. [Seal.] 21-St

**Legal Notices.**

Cull & Cull, Solicitors

In the Supreme Court of the District of Columbia.

James McLaren, Ruth M. McL. Pardew, Eliza P. Walson, Complainants, v. Abbie H. Wilson, and the Unknown Heirs, Devisees, and Allenees of Abbie H. Wilson, Defendants.

In Equity Cause 37,718. Doc. 61.

The object of this suit is to establish title by adverse possession in the complainants to lots 577 and 578 in Uniontown, District of Columbia, as per plat in book Levy Court 2, page 88, in the office of the surveyor for said District. On motion of the complainants, and for good cause shown to the court, it is, this 20th day of May, A. D. 1908, ordered by the court, that the defendants herein, to wit, Abbie H. Wilson, and the unknown heirs, devisees, and allenees of Abbie H. Wilson, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, newspapers published in the city of Washington, District of Columbia. ASHLEY

[Seal] M. GOULD, Justice. A true copy. Test: J. R. Young,  
Clerk, by Wms. F. Lemon, Asst. Clerk. 21-St

David Rothschild, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James Lennon, Deceased.  
No. 15,252. Administration Docket.—

Application having been made herein for letters of administration on said estate, by David Rothschild, it is ordered, this 18th day of May, A. D. 1908, that the unknown heirs at law and next of kin of said James Lennon, deceased, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-St

J. A. Maedel, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Catherine Helms, Deceased.  
No. 15,250. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Katie Flammer, it is ordered this 19th day of May, A. D. 1908, that Fayette Hirsch, otherwise known as Frederick Hirsch, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-St

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Andrew Matsen alias Andreas Madsten, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1908. ELLEN S. MUSSEY, 618 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,167. Administration. [Seal.] 21-St

**Legal Notices.**

Heber J. May, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward E. Holman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1908. EDWARD D. N. WHITNEY, Ouray Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,185. Administration. [Seal.] 21-St

**SECOND INSERTION.**

R. P. Shealey, Solicitor

In the Supreme Court of the District of Columbia.  
Richard Hendrickson v. Alexander D. Johnson et al.  
No. 27,439. Equity Docket No. —

The object of this suit is to remove cloud from complainant's title to lots twenty-seven (27), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), and sixty-six (66), in Emmons and Dent, trustees, subdivision of square five (5), Edgewood, as per plat recorded in Liber County No. 11, folio 44, more particularly described in complainant's bill. On motion of the plaintiff it is this 11th day of May, A. D. 1908, ordered that the defendants, Washington L. Berry, Tiernan B. Berry, William F. Berry, Thomas C. Berry, Maria Hughes Kennedy, Adelaide Savage Nealey, Lillie C. Bowie, Henry A. Berry, Edward L. Berry, and Martha A. Berry, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court:  
[Seal] HARRY M. CLABAUGH, Chief Justice.  
True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 20-St

Berry & Minor, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Jane L. Stone Harrison, Deceased.  
No. 15,248.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate by Benjamin S. Minor and Horace B. Stanton, the executors named therein, it is ordered this 15th day of May, A. D. 1908, that William Evelyn Harrison, and all others concerned, appear in said court on Tuesday, the 16th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 20-St

P. H. Marshall, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William Hirst, Deceased.  
No. 15,227. Administration Docket 88.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Frederick Bex, it is ordered this 8th day of May, A. D. 1908, that Minnie Mason, John Hirst, Samuel Hirst, Lydia Child, Mary Whitlam, and Richard J. Hirst, and all others concerned, appear in said court on Monday, the 29th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Legal Notices.**

James H. Hayden, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the State of New York and the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Lowrie Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of May, 1908. FRANKLIN B. KIRKBRIDE, 87 Madison Avenue, New York; STIRLING BELL, 2210 Mass., Ave., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,268. Administration. [Seal.] 20-St

D. W. O'Donoghue, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Term.

In re the Estate of Thomas F. Conroy, Deceased.  
Administration 12,188.

**DECREE.**

In consideration of the report of the executors filed herein on 14th day of May, 1908, showing that they have made sale of premises 819 and 821 Commerce street and the lot to the rear and side thereof, in the city of Alexandria, in the State of Virginia, to Francis C. Spinks, for the sum of \$1,200 net cash, and also that they have sold to Ernest C. Bairstow for the sum of \$2,910 net cash parts of lots H and I in subdivision made by William N. Roache of original lots 1, 2, 17, and 18, in square 280, in the city of Washington, in the District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia, in Liber H. D. C., folio 15, beginning at the southwest corner of said original lot 17, where two alleys thirty (30) feet wide intersect; thence north along the west boundary or line of said original lot (17), a distance of twenty-nine (29) feet; thence east forty-five (45) feet to an alley ten (10) feet wide, reserved in deed from William N. Roache, trustee, to James W. Barker, dated January 9, 1873; thence south along the west line of said last mentioned alley twenty-nine (29) feet to an alley (30) feet wide; thence west forty-five (45) feet to the place of beginning. It is by the court this 14th day of May, 1908, adjudged, ordered, and decreed that said sales be, and they are hereby, ratified and confirmed, unless cause to the contrary be shown, on or before the 16th day of June, 1908. Provided a copy of this decree be published in The Washington Law Reporter once a week for three successive weeks before said last-mentioned date. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 20-St

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia.  
In re Dissolution of the People's Fire Insurance  
Company of the District of Columbia.  
No. 27,787. In Equity.

It appearing to the court that application has been made to the court in the above entitled cause for a voluntary dissolution of the body corporate, the People's Fire Insurance Company of the District of Columbia, and it appearing to the court that such application, together with the accompanying accounts, inventories, and affidavits required by law have been filed in this court, it is accordingly, upon motion of B. F. Leighton, Esq., attorney for the petitioner, this 11th day of May, A. D. 1908, ordered that all persons interested in the said corporation, the People's Fire Insurance Company of the District of Columbia, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 18th day of June, A. D. 1908, why the said body corporate should not be dissolved. It is further ordered, that a notice of this order shall be published in The Evening Star, a paper of general circulation of the said District, and also in The Washington Law Reporter weekly for three successive weeks, the first insertion to be not less than one month before the said 18th day of June, 1908, being the day fixed for showing cause as aforesaid. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 20-St



**Legal Notices.**

**Mason N. Richardson and Henry C. Stewart, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Matthew Goddard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of May, 1908. **MARGARETTA GODDARD**, 227 10th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,205. Administration. [Seal.] 20-3t

**J. H. Lichliter, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William A. Armistead**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of May, 1908. **MATTIE ARMISTEAD**, 2314 Naylor Road, S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,212. Administration. [Seal.] 20-3t

**Foster, Freeman, Watson, and Colt, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James C. Colt**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1908. **JOHN M. COIT**, 908 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,244. Administration. [Seal.] 20-3t

**McKenney & Flannery, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert Arthur Hoove**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1908. **JAMES B. NALLE**, 1320 F st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,241. Administration. [Seal.] 20-3t

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

**Estate of Catharine Connor, Deceased.**  
No. 15,234. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, by **Helen Raedy**, the executrix named in said will, it is ordered this 15th day of May, A. D. 1908, that **Clara Connor**, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

[Seal] **LEY M. GOULD, Justice.** Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**Legal Notices.**

**Stanton C. Peelle, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Philip H. Deis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1908. **MARY H. DEIS**, 119 Bat. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,259. Administration. [Seal.] 20-3t

**Wm. E. Ambrose, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Ann M. Frain, Deceased.**  
No. 15,188. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, to **Henry W. Tippet**, by **Adeline Miles**, it is ordered this 12th day of May, A. D. 1908, that **Sally Shay** and **Lillie Shindle**, both of Lancaster, Penn., and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**Wm. A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Thomas C. Sullivan, Deceased.**  
No. 15,230. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **American Security and Trust Company**, it is ordered this 12th day of May, A. D. 1908, that **Theodore Sullivan**, **John Sullivan**, **George Sullivan**, **Martha Sullivan**, **McFadden**, **Elizabeth Sullivan**, **Charles Sullivan**, **Samuel M. Sullivan**, **Edith Sullivan**, **James Sullivan**, **Grace Sullivan**, **Sherman**, **Fannie Sullivan**, **Anderson**, **Laurence Miller**, **Clyde Sullivan**, **Emerick**, **Anna J. Stith**, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**Leo P. Harlow, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Daniel J. Bragunier, Deceased.**  
No. 15,243. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **John D. Bragunier**, it is ordered this 18th day of May, A. D. 1908, that **Minnie R. Compton**, **Daniel B. Compton**, **Benson B. Compton**, **Wilson G. Compton**, **Elmer L. Compton**, **Rhul A. Compton**, **Emmanuel M. Compton**, non-resident infants, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return. ASHLEY M. GOULD, Justice. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

**Legal Notices.**

Oscar Nauck, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Henry Jaeger, Deceased.  
No. 15,219. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Armin Jaeger, the executor therein named, it is ordered, this 8th day of May, A. D. 1908, that Christian Jaeger, Caroline Lauterbach, Margurite Soader, Minnie Schultz, Katie Schultz, Lena Schultz, and Annie Dorsett, nee Schultz, summons for whom was returned by the marshal "not to be found," and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-3t

Hamilton, Colbert, Yerkes & Hamilton, Attorneys  
In the Supreme Court of the District of Columbia.  
The Brennan Construction Company, a Corporation,  
Plaintiff, v. The Oblate Missionaries of the Immaculate Conception in the State of New York, a Corporation, Defendant. At Law, No. 50,025.

The object of this suit is to recover the sum of \$5,611.79 balance due plaintiff for labor, materials, and superintendence, furnished and supplied in the construction of one fire-proof school building at the corner of West and Porter avenues in the city of Buffalo, State of New York, under contract with the defendant bearing date May 1, 1905, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 14th day of May, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court:

[Seal] THOS. H. ANDERSON, Justice. A true copy.  
Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 20-3t

**THIRD INSERTION.**

Shipley Brashears, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susannah Albrittain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of May, 1908. SHIPLEY BRASHEARS, JR., 1819 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,864. Administration. [Seal.] 19-3t

Hamilton, Colbert, Yerkes & Hamilton, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of David Leverone, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1908. FREDERICA LEVERONE, 746 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,213. Administration. [Seal.] 19-3t

**Legal Notices.**

William A. Donoh, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Addie R. Perkins, Deceased.  
No. 15,225. Administration Docket 83.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Elena Smith Chapman, it is ordered this 7th day of May, A. D. 1908, that Caroline Smith, Raymond Smith, Clayton B. Smith, Franklin A. Smith, and all others concerned, appear in said court on Friday, the 12th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

[Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

D. W. O'Donoghue, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Term.  
Ellen Fealy v. Anna Dore et al. Equity No. 26,981.

DECREE.

On consideration of the report of Daniel W. O'Donoghue and F. Elwood Pratt, trustees, filed herein, that they have sold at private sale to Daniel A. Callaghan and John Callaghan, Jr. for the sum of five hundred (\$500) dollars part of lot 17 in square 335, in the city of Washington, District of Columbia, being the southeast corner of said lot, fronting seventeen (17) feet on the alley by a depth of twenty-seven (27) feet, and being more particularly described in said report, it is by the court this 4th day of May, 1908, adjudged, ordered, and decreed that said sale be, and it is hereby, ratified and confirmed, unless cause to the contrary be shown on or before 4th day of June, 1908. Provided a copy of this decree be published in The Washington Law Reporter once a week for three successive weeks prior

[Seal] to said last mentioned date. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 19-3t

P. R. Hilliard, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of Baltimore, Maryland, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Patrick Reddington, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of May, 1908. BRIDGET DURKEN, 1511 Lower Jackson st., Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,067. Administration. [Seal.] 19-3t

Duane E. Fox, Geo. Francis Williams, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William L. Ralph, Deceased.  
No. 15,209. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Louise M. Ralph, his widow, it is ordered this 8th day of May, A. D. 1908, that Henry J. Ralph, and all others concerned, appear in said court on Wednesday, the 10th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

[Seal] be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 19-3t

New corporations can procure from the Law Reporter Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

[Filed May 7, 1908, J. R. Young, Clerk.]

E. S. Mussey, Solicitor

In the Supreme Court of the District of Columbia.  
**Frank B. King, Executor Under Will of Anna Smith Mallett, Deceased, v. Jean L. Shelton et al.**  
 In Equity, No. 27,738.

The object of this suit is to obtain a decree construing the will of Anna S. Mallett, deceased, and for the confirmation of Wm. H. Saunders, George W. White, and Frank B. King as trustees named in said will. Upon motion of complainant it is, this 7th day of May, A. D. 1908, ordered that the defendants, Jean Louisa Shelton, Anna Gertrude Shelton, a minor, and Robert Philo Shelton, a minor, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first day of publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. By the Court:

[Seal] **ASHLEY M. GOULD, Justice.** A true copy.  
 Test: J. R. Young, Clerk, by Wms. F. Lemon, 19-8t

Asst. Clerk.

W. C. Balderston, Attorney

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In re Estate of Owen Riley, Deceased.  
 No. 15,061.

Upon consideration of the report of Eugene Riley, Delle R. Nevyus, and W. Frank McLean, executors, reporting the sale of original lot numbered eight (8), in square numbered nine hundred and ninety-two (992), lying and being in the District of Columbia, to William Henry Harrison for the price of two thousand nine hundred dollars (\$2,900), it is, by the court, this 4th day of May, 1908, ordered that said sale be, and the same is hereby, ratified and confirmed unless cause to the contrary be shown on or before 4th day of June, 1908. Provided a copy of this order be published once a week for three (3) successive weeks before said last named day in The Washington Law Reporter.

[Seal] **ASHLEY M. GOULD, Justice.** A true copy.  
 Attest: James Tanner, Register of Wills. 19-8t

Hargrove &amp; Morris, Attorneys

In the Supreme Court of the District of Columbia,  
 Holding a Probate Court.

In re the Estate of Anna Marie Colman, Deceased.  
 Administration. No. 14,769.

Upon consideration of the report of the sale of lot 68, in Lewis W. Vale's subdivision in square 212, with the improvements thereon known as No. 2 Iowa Circle, in the city of Washington, District of Columbia, to James K. Jones, Jr., for the sum of \$12,200, cash, by the executors and trustees of the estate of Anna M. Colman, deceased, together with the several exhibits filed therewith, it is, this 4th day of May, 1908, ordered that said sale be ratified and confirmed unless cause to the contrary be shown on or before the 4th day of June, 1908. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last named day. By the Court:

[Seal] **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 19-8t

William A. McKenney, Attorney

Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Tenuis S. Hamlin, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 25th day of May, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of May, 1908. **AMERICAN SECURITY AND TRUST COMPANY,** by William A. McKenney, Attorney. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,441. Administration. [Seal.] 19-8t

**Legal Notices.**

Hamilton, Colbert, Yerkes &amp; Hamilton, Attorneys

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Quilter, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of May, 1908. **JOHN QUINN,** 447 7th st. S. W. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,187. Administration. [Seal.] 19-8t

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Royal T. Frank, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the 4th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1908. **EMMA KNIGHT FRANK,** 2 Grafton st., Chevy Chase, Md. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,178. Administration. [Seal.] 19-8t

Michael A. Mess, Attorney

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Cyrus J. Reed, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1908. **ALVA S. TABER,** General Land Office. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,249. Administration. [Seal.] 19-8t

G. Percy McGlue, Attorney

Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles E. Barrick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of May, 1908. **MARGARET M. BARRICK,** No. 119 Mass. ave. N. E. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,216. Administration. [Seal.] 19-8t

R. G. Finney, Solicitor

In the Supreme Court of the District of Columbia,  
 Holding an Equity Court.

**Nannie Bett Branch, Complainant, v. James Branch and Mary Braxton, Defendants.** Equity No. 27,626.

The object of this suit is to obtain an absolute divorce from the defendant, James Branch, on the ground of adultery committed with the defendant, Mary Braxton. On motion of the complainant, it is, this 6th day of May, A. D. 1908, ordered that the defendants, James Branch and Mary Braxton, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks prior to said day in The Washington Law Reporter and The Washington

[Seal] Herald. By the Court: **ASHLEY M. GOULD,** Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 19-8t

**Legal Notices.****E. S. Mussey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Josephine C. A. Page, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of May, 1908. **MARTHA A. ALEXANDER**, 3006 11th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,239. Administration. [Seal.] 19-8t

**Willis E. Myers, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Samuel Shannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of May, 1908. **GEORGE C. SHANNON**, 700 N. Fulton ave., Baltimore, Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,247. Admn. [Seal.] 19-8t

**Gordon & Gordon, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles D. Holt, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 1st day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of May, 1908. **WILLIAM A. GORDON**, by **Gordon & Gordon, Attorneys**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,242. Administration. [Seal.] 19-8t

**Reginald S. Huidekoper, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Frederic W. Huidekoper, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of May, 1908. **REGINALD S. HUIDEKOPER**, 1614 18th st. N. W. **VIRGINIA C. HUIDEKOPER**, **FREDERIC L. HUIDEKOPER**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,251. Administration. [Seal.] 19-8t

**E. S. Mussey, Attorney****Supreme Court of the District of Columbia,  
Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Christian Hauge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of April, 1908. **ELLEN S. MUSSEY**, 618 15th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,082. Administration. [Seal.] 19-8t

**Legal Notices.****FOURTH INSERTION.****J. Dawson Williams and B. H. Warner, Jr., Solicitors**

In the Supreme Court of the District of Columbia.  
**Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Mejia, Their Unknown Heirs, Allenees, and Devisees, if Any or All be Dead.** In Equity, No. —.

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, **Jesse B. Rank**, to sublots 34, and 66 to 83, both inclusive, and the east 6.25 feet of sublot 65 in original lot 1 of **Jesse B. Rank's** subdivision of square 1065, and of the complainant, **George W. Montgomery**, of sublots 35 to 41, both inclusive, and the east 6.25 feet of sublot 42 in said original lot 1 in said **Jesse B. Rank's** subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in [Seal] The Washington Law Reporter and The Evening Star newspaper before said day. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. A. C. Palmer**, Asst. Clerk. April 10, 17; May 15, 22; June 12, 19

**Ralston and Siddons, Solicitors**

In the Supreme Court of the District of Columbia.  
**Patrick O'Toole v. The Unknown Heirs, Devisees and Allenees of Henry Stall.**  
No. 27,686. Equity Docket 61.

**ORDER OF PUBLICATION.**

The object of this suit is to declare the title to part of original lot numbered seven (7) in square numbered one hundred and forty-four (144) in the city of Washington, District of Columbia, beginning on Nineteenth street 22 feet 10 1/4 inches from the northwest corner of said lot and running thence east 140 feet; thence south 22 feet 10 1/4 inches; thence west 140 feet; and thence north 22 feet 10 1/4 inches to the place of beginning, to be good in fee simple in the complainant by reason of adverse possession thereof for more than forty-eight years. On motion of complainant, it is, this 18th day of April, A. D. 1908, ordered, that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of the date of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and [Seal] Evening Star before said day. By the Court: **ASHLEY M. GOULD**, Justice. A true copy. Test: **John R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. Apr 17, 24, May 15, 22, June 19, 26

**FIFTH INSERTION.****J. H. Taylor, Solicitor**

In the Supreme Court of the District of Columbia.  
**Ella L. Warfield v. Unknown Heirs, Devisees, and Allenees of Andrew Schofield, or Schofield, and Minnie Fuller.** Equity, No. 27,621.

The object of this suit is to establish complainant's title by adverse possession to lots 11, 12, and 13 of Fuller's subdivision in square 60. On motion of the complainant, it is, this 12th day of March, 1908, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during the three months in The Washington Law Reporter and The Washington Herald. **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. Mar. 20, 27; Apr. 17, 26; May 24, 31

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WASHINGTON, D. C. - - - - - MAY 29, 1908

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### Parol Evidence; Written Contracts.

In *Martin v. Thrower*, decided by the Supreme Court of Georgia, and reported in the Central Law Journal, it is held that parol evidence is admissible either to explain ambiguities in a written contract or to determine, where a writing is ambiguous, whether such writing in fact indicates a contract or a mere memorandum of itself raising the presumption of an agreement between the parties, or manifests a mere tentative proposition on the part of one of the parties. A contract may be partly in writing and partly verbal. In such a case all evidence tending to show what the entire contract really was should be admitted.

It is for the court to construe written contracts, but it is not for the court to construe any part of the contract which depends for its existence and completeness upon parol testimony as to facts which are in dispute.

A contract resting in parol must be assented to by both parties in the same sense. "Mutual assent" is assent to the same thing in the same sense under a common understanding of the stipulations agreed to.

The burden is upon one seeking a recovery upon a contract to prove the terms and execution of such contract by the preponderance of

evidence, and upon request the court should charge the jury to this effect.

### Vendee's Lien Under Contract for Conveyance of Land.

In the case of *Elterman v. Hyman*, decided May 19, 1908, by the Court of Appeals of New York, and reported in the New York Law Journal, it is held that a vendee of land, under a contract of purchase and sale, who is not in possession, and although there are no special equities affecting the transaction, has a lien upon the land for the amount paid by him under the contract, and on default of the vendor to fulfill and complete the contract, the vendee may foreclose the lien. It is further held that the commencement of an action in equity for that purpose is not tantamount to a rescission of the contract. In the opinion of the court, after reviewing numerous authorities bearing on the question of the right of a vendee to a lien, it is said:

"Whether the foundation of the lien is natural equity, imputed intention, partial ownership, the implication of a trust or a blending of some of these sources, the authorities almost without exception in those jurisdictions which give a lien to the vendor, are clear that one exists. As the vendor has a lien because he owned the land, but conveyed prematurely, and the vendee ought not to keep it without paying for it, so, as it seems to me, the vendee has a lien because he has paid for the land, pursuant to contract, and as he can not get the land he has a right to get out what he put in on the faith of the land. The lien springs from the trust under which the vendor, as the legal owner, holds the land for the vendee, the equitable owner. Part payment creates partial ownership, and the vendee has an interest in the land itself to the extent of the payments made thereon. The contract and payment in full makes him the equitable owner of all the land. The contract and payment in part makes him the equitable owner pro tanto. When the vendor can not convey the equitable owner, wholly or in part, may assert his rights in a court of equity to get out of the land what he paid on it. If the vendor is not the absolute owner the lien of the vendee 'exists only to the extent of the vendor's interest,' which in this case is only that of a subpurchaser. *Aberraman Iron Works v. Wickens, L. R., 4 Ch. App. Cas., 101; Fry Specific Performance, 3d Am. Ed., 660.* The right is correlative to that of the vendor conveying without payment in either case the res, or the subject of the contract, is the land, and whatever is paid on the land without corresponding conveyance or conveyed without corresponding payment is a lien on the land by virtue of parting with money on the faith of the land or with land on the faith of the promise to pay for it. Payment is not made on the credit of the vendor, but on the credit of the land, and the purchaser's money, in equity, is converted into land or attached to it as a lien. The equitable ownership, when specific performance can not be had, is converted into money by a judicial sale of the vendor's interest, which, in effect, is the foreclosure of an equitable mortgage."

# Court of Appeals of the District of Columbia.

## THE CENTRAL NATIONAL BANK OF WASHINGTON, APPELLANT,

v.

## THE NATIONAL METROPOLITAN BANK OF WASHINGTON.

### BANKS; CHECKS; PAYMENT ON FORGED INDORSEMENT; DUTY OF DRAWER TO ASCERTAIN IDENTITY OF PAYEE.

1. Payment by a bank of the amount of a check to the party who was intended by the drawer to receive the money will bind the drawer, although in giving the check the drawer did so in the belief, induced by the fraud of the payee, that she was the person she represented herself to be.
2. A bank has a right to believe that the drawer of a check has acted with full knowledge of the party to whom he gives the check, and its duty to him is discharged when it satisfies itself that the payment was intended to be made to the party presenting it.
3. As between two innocent persons, the one whose act was the cause of the loss should bear the consequences.
4. A check drawn by one L. on the plaintiff bank payable to the order of Mrs. A. E. McKnight for the amount of a loan secured by trust deed was presented to and paid by a trust company, the payee being identified as Mrs. A. E. McKnight by a party who went with her to the trust company from L.'s office, and who was in some way connected with the loan. The person receiving the money was the person with whom L. had dealt and to whom he gave the check, but he did so in the belief that she was, as she falsely represented herself, Mrs. A. E. McKnight. The trust company indorsed the check to the defendant bank, which indorsed it to the plaintiff bank on which it was drawn, all prior indorsements being guaranteed. Plaintiff first charged the check to L.'s account, but subsequently, on the fraud being discovered, on demand of L. repaid him the amount, and brought suit to recover the amount from the defendant on its indorsement. Held, that under the facts of this case it must be treated as if the action was by L. to recover the money as paid to the wrong person; that the duty was upon L. to ascertain whether the person to whom he gave the check was the person whom he believed and thus represented her to be; and that it appearing that the person receiving the money on the check was the person with whom L. dealt, and whom he intended to receive the money, the defendant was not liable, and a judgment entered upon a verdict directed in its favor affirmed.

No. 1847. Decided May 5, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,927 entered upon a verdict directed by the court in an action to recover the amount of a check indorsed by defendant. Affirmed.

Mr. E. C. BRANDENBURG, Mr. F. W. BRANDENBURG and Mr. A. A. Birney for the appellant.

Mr. W. F. MATTINGLY and Mr. JOHN B. LARNER for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The declaration of the Central National Bank, alleged that on March 17, 1905, one Wharton E. Lester, by his check directed plaintiff, as his banker, to pay to the order of Mrs. A. E. McKnight the sum of \$1,949.75. That said check was indorsed in the name of said A. E. McKnight to the Washington Loan and Trust Company, said company indorsed the said check to the defendant, the National Metropolitan Bank, and defendant, on March 18, 1903, indorsed the same to the plaintiff. That defendant guaranteed the genuineness of the prior indorsements, including that of A. E. McKnight. That plaintiff relying on the guarantee of the defendant of the validity of said

prior indorsements, paid the amount of same to defendant. That said check was never indorsed by Mrs. A. E. McKnight, payee therein, and the same is not her genuine signature, but a forgery. That plaintiff has, by reason of the same, lost the value of said check, which defendant refuses to pay, etc.

The check introduced in evidence is in ordinary form, executed by Wharton E. Lester on March 17, 1905, and directing the Central National Bank to pay to the order of Mrs. A. E. McKnight the sum of \$1,949.75. It bears the indorsements, first, of Mrs. A. E. McKnight; second, the Washington Loan and Trust Company; third, National Metropolitan Citizens' Bank, the name of which has since been changed by dropping the word "Citizens." Both the last indorsements are followed by the words: "Prior indorsements guaranteed." The cashier of plaintiff testified that Wharton E. Lester, the drawer of the check, was a depositor with plaintiff; that the defendant's indorsement is genuine; that the check was received by plaintiff from the defendant, in the usual course of business, through the clearing house of said city of Washington, and was paid by it on the faith of defendant's indorsement, without regard to the prior indorsements thereon, and charged to the account of said Lester. That thereafter said Lester advised plaintiff that the indorsement of the name of "Mrs. A. E. McKnight" was a forgery and demanded the return of the money which had been charged to his account. That acting upon said demand, plaintiff repaid the said sum to said Lester, and made demand on defendant for the payment of the same, under its guaranty of the prior indorsements on said check, which was refused.

Mrs. A. E. McKnight, called by the plaintiff, testified that that was her name, and that she resides in the city of Washington and knows no other person of that name residing there or elsewhere. That the indorsement of her name on said check was not made by her or her authority; and that she had never seen the check until at the time of the trial of one Miss Puckett for forgery. That she had only a slight acquaintance with the said Puckett, and did not know said Lester.

Richard J. Marshall, called by the plaintiff, testified that he is an agent and loan broker. That he first saw the check at the office of Lester who received from the person now known as Miss Puckett a note for \$2,000 secured by a trust deed. That Lester dealt with her as Mrs. A. E. McKnight. That the difference between the amount of the check and that of the note represented certain expenses of examination of title, etc., none of which went to Lester. That at the time witness and Lester supposed her to be Mrs. A. E. McKnight. That witness, at the request of the party, identified her as Mrs. A. E. McKnight at the office of the Washington Loan and Trust Company. That she indorsed the name of Mrs. A. E. McKnight on the check and received the money. That he supposed her to be Mrs. A. E. McKnight at the time. That the said Puckett had since been convicted of the forgery of said indorsement, and is now in the penitentiary.

Plaintiff rested, and the defendant moved the court to direct a verdict. After argument the court indicated that he was about to grant said motion. Thereupon plaintiff moved the court to reopen the case and permit plaintiff to call Lester as a witness. It appears also from the bill of ex-



ceptions that the court took the following facts into consideration: The case was at the foot of the assignment on the day it was called. Defendant requested postponement until the following Monday. Plaintiff objected to postponement on the ground that Lester was a necessary witness and could not be in court on Monday by reason of an engagement to try a case in another court. Lester had been at the trial table with plaintiff's counsel continuously, and in conference with them. He and said counsel engaged in a consultation, before the announcement was made closing the evidence, which the court believed had reference to the question of calling Lester as a witness. The application to call Lester was not made until the court had announced his reasons for granting defendant's motion, and was on the point of formally granting it. For these reasons, the court refused the motion to reopen the case, and instructed the jury that the evidence conclusively established that Lester intended that the woman who had indorsed the check in the name of "Mrs. A. E. McKnight" should cash the check and should get the money; "in short, that the indorsement on the back of the check of the name of 'Mrs. A. E. McKnight' in fact identified the person whom Mr. Lester intended to get the money, and that the person who got the money was the person whom he intended to get it, and that they should return a verdict for the defendant."

The bill of exceptions showing the foregoing concludes: "There was no evidence tending to show who were the parties to the deed of trust aforesaid; and no evidence tending to prove that the witness, Mrs. A. E. McKnight, was ever the owner of any real estate."

1. The first assignment of error is founded on an exception taken to the admission of the evidence of the witness Marshall relating to the facts and circumstances surrounding the execution and delivery of the check to the supposed Mrs. McKnight, and the receipt of the money by her from the Washington Loan and Trust Company. For reasons, that will be apparent in the discussion of the main question in the case, we think this evidence was competent. It is true that Lester was not a party to the action, but the plaintiff having recognized his right to the return of the money, as having been improperly paid to the party receiving the check from him, has taken his place, and is bound by whatever would bind him had it refused his demand for repayment and the action had been by him against it to recover money paid under a forged indorsement of his check.

2. The motion to reopen the case for the purpose of introducing evidence was addressed to the sound discretion of the trial court. While it would have been more satisfactory to have had evidence from Lester regarding the circumstances under which the check had been given, under our view of the point on which the case must be made to turn, we are not prepared to say, that, under the circumstances disclosed in the bill of exceptions, there was an abuse of discretion by the court.

3. Unquestionably it is the duty of a bank to pay the money of its depositors to the person named in his check, and payment to a different person upon a forgery of the payee's name will not bind the drawer. It is also true, that the indorsement of a check or draft is a guaranty of the genuineness of prior indorsements thereof.

In our opinion, however, these principles, on

which the appellant relies, are not sufficient for the determination of the question raised by the evidence in this case. Nor is there any provision of the negotiable securities act, contained in our Code, which is intended to apply to and govern the particular facts and circumstances here disclosed.

It is clear that the transaction involving the loan of the money was between Lester and the party to whom the check was delivered. She did not profess to be the agent or representative of a real Mrs. McKnight, but that person herself. The transaction was with her under the assumed name, and the check was delivered to Marshall for her, and it was intended that she should receive the proceeds. Marshall, knowing that she was the person intended to receive the money, and believing her to be in fact named Mrs. A. E. McKnight, went to the Washington Loan and Trust Company, identified her, and saw her indorse her name and receive the money. The real Mrs. McKnight had nothing to do with the transaction and had no interest in the check. Lester and Marshall were the victims of a fraud. What inquiry they may have made to determine the identity of the party, unfortunately, does not appear. Whatever it was they were the victims of deception. It was their act in accepting the woman as Mrs. McKnight and dealing with her under that name, that enabled the deception to be practised upon the Washington Loan and Trust Company, which, under the law as contended for by the appellant, would be ultimately liable as the one accepting the indorsement of the supposed Mrs. McKnight, and guaranteeing it to the defendant. Regarding the plaintiff, by reason of its repayment to Lester, as standing in his place, the question is, whether the Washington Loan and Trust Company made itself liable to him through paying the check to the person shown to be the one intended by him to receive the money. In other words, was it its duty to go back of his acts and representations, and ascertain that the presenter of the check, who Lester intended should receive the money, was not the person he supposed her to be? This question has been answered in different ways. Some of the cases relied on by the appellant, as answering it in the affirmative, will first be reviewed.

Tolman v. American National Bank, 22 R. I., 462, 463, is directly in point. Louis Potter, representing himself to be Ernest A. Haskell, obtained a loan from the plaintiff giving him a note signed under his pretended name of Haskell, and receiving a check on defendant payable to Haskell. Potter, indorsing the name of Haskell, obtained the money from defendant who charged it to plaintiff's account. Dealing with the contention that the plaintiff intended the imposter to have the money, it was said: "Of what consequence is the intent of the drawer of the check when the direction is to pay the party named. He has the right to assume that the bank will pay to the party as directed. In this case the money was intended for Haskell, because his name was the only name suggested. . . . It is a perversion of words to say that it was intended for Potter simply because he had impersonated Haskell."

It was further said that the Negotiable Securities Act also covered the question of defendant's liability for paying the money to the imposter upon forgery of the name of Haskell.



*Beattie v. Nat. Bank of Ill.*, 175 Ill., 571, is not directly in point but analogous. In that case, a draft was made payable to George A. Bent when it should have been made to George P. Bent. It was mailed to George A. Bent, and came into the hands of a party by that name, who knew that the draft was not intended for him. He presented it at the bank, indorsed it and obtained the money. This was held to constitute a forgery, and the bank was declared liable for payment to the wrong person.

*Atlanta Nat. Bank v. Knapp*, 81 Ga., 597. In that case one Knapp forged his wife's name to a trust deed, and took a check payable to her on which he procured the money by forging her name. The case does not decide the question here, because the check was not payable to Knapp, but to his wife. He, at least, was not the person intended to have the money.

*Shipman v. Bank*, 126 N. Y., 318. One Bedell was a confidential employee in charge of the money-lending department of Shipman's business. Dodge, the bookkeeper of Shipman's, kept the account with the bank, in which they kept their money. Bedell made out a number of statements, as was his custom, showing money needed to advance on certain loans, for which Dodge filled up the checks which were signed by a member of the firm. Among these were twenty-seven checks, the payees of sixteen of which were fictitious. Bedell forged the indorsements on these checks and obtained the money. All but three of the checks were paid by the bank through the Clearing House, and in each case without inquiry as to genuineness of the indorsements; the others were paid to Bedell. The checks were returned to Shipman, who later discovered the fraud, tendered the checks back, and demanded payment. The court found that the bank paid the checks without any inquiry as to the genuineness of the indorsements, in reliance upon the responsibility of the persons presenting them for payment, and not in reliance upon anything done or forbore by Shipman, except the fact that the checks had been drawn by them, and held the bank liable. In other words, it found that the loss was not due to the negligence of Shipman.

*Armstrong v. Pomeroy Nat. Bank*, 46 Ohio St., 512. There Grimes, professing to act for one Brown, obtained a check payable to Brown, and indorsing Brown's name obtained the money. It seems there was no such person as Brown. The check was not intended for Grimes, and he obtained the money by forging the name of the person for whom it was intended.

*Dodge v. National Ex. Bank*, 20 Ohio St., 234; sec. 30 Ohio St., 234. Dodge holding a certificate of indebtedness issued by a paymaster of the United States Army, indorsed the same in blank, and mailed it to Paymaster Bonister in Cincinnati for payment. The letter was stolen and the certificate was presented to Bonister for payment. He required identification and the party did not return. Thereafter it was presented to one Stryker, another paymaster, who asked for proof of identity. The party told him that he could have himself identified at the bank on which the check was to be drawn. Stryker made out a check on a blank form, striking out the words "or bearer" and making the same payable to Frederick B. Dodge or order. Inducing some one to identify him as Dodge, the party indorsed the check in the

name of Dodge and received the money. In an action by Dodge against the bank, he was held entitled to recover. A serious question in the case, on which there was dissent, was whether Dodge had the right to maintain any action against the bank at all. In discussing a question relating to the failure to offer proof of the entire transaction, the majority of the court took occasion to say, that the bank would have had the right to show that the person to whom the check had been delivered was, in fact, the person whom the drawer intended to designate by the name of Dodge. Had such proof been made it would seem that the decision would have been different.

The following cases answer the question in a different manner: *Robertson v. Coleman*, 141 Mass., 231, 232. In that case a person registered at a hotel in Boston by the name of Charles Barney. On the next day he took a stolen wagon and team to Coleman, who was an auctioneer, to sell for him, representing himself to be named Charles Barney. Before selling the property, Coleman learned by telegraph that Charles Barney of Swansey was a reliable man, but took no other steps to ascertain that the seller was really Charles Barney. Having made the sale, he gave the party a check drawn to the order of Charles Barney. The hotel keeper took the check indorsed by the party as Charles Barney, paying him the amount of the same, less the bill due by him. It was held that payment to the party who was intended to receive the money on the check bound the drawer.

*Emporia National Bank v. Shotwell*, 35 Kan., 360. Application was made by mail for a loan on certain land the title to which was in one Daniel Guernsey, who formerly lived in Kansas, but had removed to Iowa. The application was signed "Daniel Guernsey." The title was passed, a note and mortgage were executed by the pretended Daniel Guernsey, and a check was sent to him for the amount of the loan. He indorsed it as "Daniel Guernsey" and obtained the money from the bank before the fraud was discovered. For the reason that the payment was made to the person for whom it was intended, the bank was held not to be liable as for the payment of it under a forged indorsement of the name of the designated payee.

*Land Title and Trust Co. v. N. W. Nat. Bank*, 196 Pa. St., 230. A party giving his name as Ashley obtained the title papers of one Bissey, who owned a lot which he wished to sell, by pretending that he wanted to purchase the same. He went to a conveyancer, represented himself to be Bissey, showed the title papers, and applied for a loan of \$5,000 on the property. The conveyancer believing him to be Bissey, negotiated a loan. The mortgagee wishing title insurance from the Land Title and Trust Company, deposited the amount of the loan with it to be paid to the mortgagor when the mortgage should be executed. When ready for settlement Ashley went to the office of the company with the conveyancer who introduced him as Bissey. He executed the mortgage in that name and received the company's check drawn on itself to the order of Herman S. Bissey. This check, indorsed "Herman S. Bissey," was deposited in the N. W. Nat. Bank by a person who opened an account as C. B. Rogers, and was collected by the bank in due course of business and paid to Rogers. Whether Ashley and Rogers were the same person did not appear. The fraud was not discovered until about six months later when

the real Bissey received a notice to pay interest. All of the parties, save Ashley, and possibly Rogers who got the money, acted in good faith. The Title and Trust Company sued the bank, claiming that there had been a forgery by Ashley of the name of Bissey, and that it had paid the money on the guaranty of genuineness given by the bank's indorsement. The court in denying the liability of the bank, gave its reasons as follows:

"Generally a bank is not bound to know the signature of the indorser of a check, and, if it pays a check on a forged indorsement, it can recover the money of the party to whom it was paid, if it proceeds promptly on discovery of the fraud. This is upon the principle that the indorsement of a check is an implied warranty of the genuineness of the previous indorsements. But, in order that a bank may recover, it must appear that it has sustained a loss. If it can charge the payment to the account of the depositor it has lost nothing, and has no cause of action. The question is, then the same, whether we consider the check as having been drawn by an ordinary depositor in the trust company, or as having been drawn, as it was, by the real estate department of the company on the banking department. While, as between the bank and the trust company, as a banker, the former is bound by its implied warranty of the indorsement, still, there is no cause of action unless the payment of the check was not, as against the drawer of the check, a good payment. The reason of the rule that when a bank pays a depositor's check on a forged indorsement, or a raised check, it is held to have paid it out of its own funds, and can not charge the payment to the depositor's account, is that there is an implied agreement by the bank with its depositor that it will not disburse the money standing to his credit, except on his order. The rule applies where a check has been lost or stolen and the payee's name has afterwards been forged; but it does not protect a depositor who is in fault, as in intrusting a check to one who he has reason to suppose will make a fraudulent use of it, or in so carelessly filling up a check that it may be readily altered, or in issuing a check to a fictitious person. It is confined to cases in which the depositor has done nothing to increase the risk of the bank. It should not apply when the check is issued to one whom the drawer intends to designate as the payee: First. Because in such a case the risk is not the ordinary risk assumed by the bank in its implied contract with its depositor, but a largely increased risk, as it follows that a check thus fraudulently obtained will be fraudulently used. The bank is deprived of the protection afforded by the fact that a bona fide holder of a check will exercise care to preserve it from loss or theft, which are the ordinary risks. There is thrown upon the bank the risk of antecedent fraud practiced upon the drawer of the check, of which it has neither knowledge nor means of knowledge. Secondly. Because in such a case the intention with which the drawer has issued the check has been carried out. The person has been paid to whom he intended payment should be made. There has been no mistake of fact except the mistake which he made when he issued the check, and the loss is due, not to the bank's error in failing to carry out his intention, but primarily to his own error into which he was led by the deception previously practiced upon him."

United States v. Nat. Ex. Bank, 45 Fed. Rep.,

163. In that case an imposter had come into possession of postoffice money-orders payable to another person. By fraudulent representations he induced a person to believe that he was the payee of the orders, and to identify him at the postoffice. The orders were taken up and a check given him on the bank payable to the payee named in the orders. The same person identified him at the bank, which cashed the check that was indorsed with the same name, and charged the same to the account of the United States. In giving reasons for refusing recovery in an action by the United States against the bank, the court said:

"The question for the bank is, 'For whom was this money intended by the drawer?' and the name is but one means of determining the question. . . . It was the duty of the department to ascertain the true individual and to pay no one else. Without doubt the postmaster would have paid currency instead of a check, if he had had it on hand, rather than in bank. If he would not, it would be very good evidence of neglect to deliver a check to a party, and put it in his power to draw the money on a forged indorsement in circumstances where the postmaster would not have been satisfied to part with the cash. Allowing the drawer and drawee to be equally innocent, the loss should fall upon the one who, by his act, has been the occasion of the loss which in this case, I think, was the department. Though there may have been no express negligence on the part of the officials of the postoffice, it was a mistake to deliver the check to a person not entitled to it, and that mistake has been the occasion of the loss."

"The postoffice officials had every reason to believe that the bank would pay upon the identification and proofs which had actually induced them to deliver the checks. The fraud—the imposition—had been mainly accomplished when a check for the money was delivered to Schuman as the true payee named in the money-orders, and it does not seem to the court either just or legal, after all that had taken place, to shift the responsibility for loss upon the bank. Where both are innocent, and the loss must fall upon one, it should be upon the one who, in law, most essentially facilitated fraud. *Stout v. Benoist*, 39 Mo., 281. So in respect to two persons equally innocent, where one is bound to acknowledge and act upon his own knowledge, and the other has no means of knowledge, there seems to be no reason for burdening the latter with loss in exoneration of the former; or, if both are equally innocent and equally ignorant, the loss should remain where the chance of business has placed it."

We are of the opinion that the cases last mentioned express the true doctrine that should govern in such cases as this. It is a principle of natural justice that as between two innocent persons the one whose act was the cause of the loss should bear the consequences. As the transaction in this case began with Lester it was his duty to use diligence to ascertain the identity of the party with whom he dealt. Failing to make this discovery, he became the victim of a fraud. The imposter having succeeded in this first and essential step in the practice of the fraud, the next was comparatively an easy one. The bank had a right to believe that Lester had acted with full knowledge of the party to whom he gave the check for the money, and its duty to him was discharged

when it satisfied itself that the payment was intended to be made to the party who presented it. This information it obtained from Marshall, who was connected with the transaction in some way, and to whom Lester delivered the check not for the real Mrs. McKnight, who had nothing to do with the transaction and with whom Lester was not acquainted, but for the perpetrator of the fraud who, he believed, bore that name. Marshall, in apparent good faith, knowing that the money was intended to be paid to her, and believing that her true name was given in the check, introduced her to the officers of the bank and enabled her to obtain the money. -What further inquiry was it reasonable for the bank to make under such circumstances?

Lester, having delivered the check to her in perfect good faith, would, no doubt, have performed the same service for her at her request, had Marshall not been present, or had it been inconvenient for him to perform it. Had Lester, himself, performed this service, he would clearly be estopped to question the payment; and we see no reason why his conduct which led Marshall to perform it should not have the same effect. The view that we have taken of the law of this case finds strong support in a carefully considered decision of the House of Lords in England. *Bank of England v. Vagliano Bros.*, L. R., 1891, App. Cas., 107. In that case, a confidential clerk of Vagliano Bros. forged letters, purporting to enclose drafts on them from a foreign correspondent which he had also forged. Believing them to be genuine, the firm accepted the drafts, which were payable to the order of a firm doing business in Russia. The same clerk abstracted the drafts from the mail of the firm directed to the payees, forged the indorsements of the latter and obtained the money from the bank with which the firm did a large business. The primary cause of the loss was the acceptance of the forged drafts by Vagliano Bros. Some of the Lords Justices regarded the entry of the names of the foreign payees as equivalent to ordering payment to fictitious persons under the English Negotiable Securities Act, but the substantial ground of the decision in favor of the bank was the negligence of Vagliano Bros., which was held to be the inducing cause of the payment of the checks. *Ld. Ch. Hatherly* said, in the course of his opinion: "It seems to me that if all these circumstances acting upon and inducing the bankers to make the payments they did make, are acts which are the fault of the customer, it is the customer and not the banker who ought to bear the loss" (p. 117). *Lord Selbourne* (p. 123) after stating that a *prima facie* case is made by showing that the drafts had been paid to an unauthorized party, said there may be circumstances which answer this *prima facie* case. Among these is negligence on the customer's part. He then proceeded: "I think a representation made directly to the banker by the customer upon a material point, untrue in fact (though believed by the person who made it to be true), and one on which the banker acted by paying money which it would not otherwise have paid, ought also to be an answer to that *prima facie* case."

- Treating this case, as we must under the facts proved, as if the action was one by Lester to recover the money as paid to the wrong person, we think it would be unreasonable and unjust to permit him to escape the natural consequences of his

own neglect or mistake, by holding the bank at fault for not making the complete inquiry that he ought to have made primarily to ascertain if the person to whom he gave the check was, in fact, the person whom he believed, and thus repressed her to be.

We think the court was right in directing the verdict for the defendant, and the judgment will, therefore, be affirmed with costs.

Affirmed.

WILLIAM BLATCHER, APPELLANT,

v.

PHILADELPHIA, BALTIMORE, AND WASHINGTON RAILROAD COMPANY.

CARRIERS; NEGLIGENCE; DEFECTIVE APPLIANCES; STIPULATION AGAINST LIABILITY FOR NEGLIGENCE.

Plaintiff contracted with defendant to transport certain horses, etc., with plaintiff in charge, from Washington to destination if on defendant's road, and if not to the connecting carrier. Plaintiff was required to inspect the body of the car used, and the carrier was absolved from liability for loss or injury occasioned by defects in the car, and from all liability for injuries to plaintiff resulting from negligence or otherwise. The destination was a point beyond the terminus of defendant's road, but defendant furnished a car for the entire trip. The train stopped at a point beyond the terminus of defendant's road, and plaintiff, pursuant to his contract, left the car to water his horses. In attempting to reenter the car he grasped an iron hasp on the door of the car which, being defective, pulled out and plaintiff was thrown and injured. Held—

(1) That plaintiff was a passenger for hire, and defendant's attempt to exempt itself from responsibility for negligence was neither just nor reasonable, and was therefore void.

(2) That it was the duty of defendant to furnish plaintiff a car properly equipped and in condition for the trip and for the particular service required; and it could not evade this plain duty by attempting to make a car inspector of the shipper, who may have known nothing about cars or their equipments.

(3) Where the car furnished plaintiff was defective at the time it was so furnished, and such defect was the occasion of injury to plaintiff, the defendant is liable for such injuries, although the accident occurred at a point beyond the terminus of defendant's road; and the failure of the connecting carrier to inspect the car will not relieve the defendant from liability for its negligence in furnishing a car with defective appliances.

(4) Under the circumstances of this case, the question whether plaintiff was justified in using the hasp in attempting to reenter the car was for the jury.

No. 1848. Decided May 5, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,047, entered upon a verdict directed by the court in an action for personal injuries. Reversed.

Mr. M. F. MANGAN and Mr. JAS. B. HERRIGAN for the appellant.

Mr. F. D. McKENNEY, Mr. J. S. FLANNERY, Mr. WM. HITZ, and Mr. G. B. CRAIGHILL for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decision of the Supreme Court of the District directing a verdict for the defendant below.

The plaintiff entered into a contract with the

defendant railroad company to transport certain horses and vehicles with plaintiff in charge from Washington to destination if on said carrier's road, and if not, to the connecting carrier. Said contract required the shipper to inspect the body of the car used, and absolved the carrier from all liability on account of loss or injury to stock occasioned by the defective condition of such part of the car. It also exempted the carrier from all liability for injuries to plaintiff resulting from negligence or otherwise.

The destination of the plaintiff was Newport, R. I., a place beyond the terminus of defendant's road. The defendant company furnished plaintiff a car for the entire trip, and when the train to which this car was attached stopped at Tauton, Mass., beyond the terminus of the defendant's road, plaintiff, pursuant to the terms of his contract, alighted from the car to obtain water for his horses. Under said contract it was not incumbent upon the defendant or connecting carriers to stop said car opposite a platform, nor did it so stop on this occasion, the evidence showing that at the point where the car stopped it was at least five feet from the floor of the car to the ground. In attempting to reenter the car, there being no other means provided, the plaintiff grasped an iron hasp about ten inches long and three inches wide which hung from the side of the door of the car and which was attached thereto by a bolt which passed through the framework of the door and on the end of which was a thread for a screw. This hasp was designed primarily for use in fastening the door and was like the ordinary door hasp except that it was somewhat larger and stronger. As the plaintiff was in the act of drawing himself into the car, the bolt which held the hasp pulled out and the plaintiff was projected onto an adjoining track and injured. He testified that he examined the hasp and bolt after the accident and found that "the thread at the end of the bolt had no nut on it and was rusty all along; that he has traveled frequently with stock on cars similar to this one and had gotten on the cars in the same manner that he did on this occasion; that there was nothing but this hasp to catch hold of, and that he could not get into the car without catching hold of something."

The plaintiff was a passenger for hire, and the attempt on the part of the carrier to exempt itself from responsibility for its own negligence, or the negligence of its servants, is neither just nor reasonable, and, therefore, void. *R. R. Co. v. Lockwood*, 17 Wall., 357; *B. & O. & C. R. R. Co. v. Voigt*, 176 U. S., 505.

The accident causing the injury having occurred beyond the terminus of defendant's road, can the defendant, in any event, be charged with responsibility? There can be no question that it was the duty of the carrier to furnish plaintiff a car properly equipped and in proper condition for the trip and for the particular service contemplated. And it is against the policy of the law to permit a common carrier to evade this plain duty by attempting to make a car inspector of the shipper, who may know nothing about cars or their equipment. *Railway Co. v. Marshall*, 74 Ark., 597; *Leonard v. Whitcomb*, 95 Wisc., 646; 6 Cyc., 441.

It is contended that the initial road in this case did not meet that responsibility because of the defective condition of said door hasp when the car was assigned plaintiff. Assuming that this hasp

was out of repair and defective at the time the car was assigned plaintiff, which, of course, was a question for the jury, and that, in the absence of any other means of assistance, plaintiff was justified in using the hasp in attempting to enter the car, the defendant's negligence was primarily responsible for the accident. In *I. B. & W. Ry. Co. v. Strain et al.*, 81 Ill., 504, the initial carrier was held responsible for the loss of stock beyond the terminus of its line because of a defect in the car, which was present when it was assigned for the trip, notwithstanding a clause in the contract of shipment exempting the carrier from liability for such loss beyond its own line. The court stated that it was the duty of the company to furnish good and sufficient cars for the service contemplated; that "this they did not do, and thence the loss. For this neglect of duty, we are of opinion the railroad company is responsible." Also, see *Moon v. Nor. Pac. Ry. Co.*, 46 Minn., 106.

Even though the connecting carrier was charged with the duty of inspecting this car, we are of opinion that its failure to do so does not relieve the defendant company from responsibility for its negligence in assigning plaintiff a car with a defective appliance since the injury was the result of that defect. "The most that can be claimed from the omission of the proper inspection by the Lake Shore Company (the connecting carrier) is that it failed to cure or remedy the previous negligence of the plaintiff in error (the initial carrier), and thereby interrupt the consequences which were likely to, and did flow from it. That failure can not with propriety be said to have broken the connection between the negligence of the plaintiff in error and the injury resulting from the use of the defective car, or to have been the self-operating cause of the injury." *Railroad Co. v. Snyder*, 55 Ohio St., 360.

This brings us to the question whether the plaintiff was justified in using the hasp in attempting to reenter the car. His testimony, which is uncontradicted, shows that it was fully five feet from the ground to the floor of the car; "that there was nothing but this hasp to catch hold of, and that he could not get into the car without catching hold of something." The defendant was chargeable with knowledge of such a situation because under the terms of its contract with the plaintiff neither it nor any connecting carrier was required to stop the car opposite platforms. Under the contract plaintiff was required to leave the car when it stopped on the occasion of the accident for the purpose of obtaining water for his horses. Having left the car it was, of course, necessary for him to reenter it. He says he could not do so without catching hold of this hasp. He further says that he has frequently traveled with stock on cars similar to this one, and has gotten on the car as he attempted to do on this occasion. He also offered to show that he had seen railroad men and others use such hasps in getting into similar cars. We think the jury should have determined, whether in the circumstances, notwithstanding this hasp was primarily intended for another purpose, plaintiff was justified in the use he attempted to make of it. The size and strength of the hasp, its location on the framework of the door where it could be grasped conveniently by anyone attempting to enter, the absence of any other means of assistance in entering the car, the necessity for such means, and the evidence relating to the prior

similar use by the plaintiff and railroad employees, were all facts to be taken into consideration by the jury in determining whether the plaintiff was guilty of contributory negligence—whether the defendant company did not really intend the hasp to be so used.

Counsel for appellee rely upon the case of *McCauley v. Ry. Co.*, 10 App. D. C., 560: 25 Wash. Law Rep., 331. The facts in that case differ materially from the facts in this. *McCauley* was an employee of the railway company and not a passenger. It was his duty as fireman to set flags on either side of the front of the engine, which had a foot-board and hand-rail on each side extending to the front flag-staff socket. There was no hand-rail in front over the pilot and never had been on that style of engine. Plaintiff attempted to pass in front over the pilot for the purpose of removing the flags and in so doing grasped a number plate, the sole function of which was to indicate the number of the engine. The plate came off and the plaintiff was injured. Ample means were provided for the removal of these flags without risk of injury. The plaintiff knew there was no hand-rail in front of the engine, and knew, or should have known, that the number plate was unfit and not designed or intended for the use he made of it. The court found that inasmuch as it was "clear that ample means had been provided on each side of the engine for the convenient and safe removal of the front flags," which tended "strongly to show that the use of the number plate as a support in the removal of the flags could not have been in the contemplation of the defendant," it was incumbent upon the plaintiff to show "by some evidence that his use of the number plate as a support in the performance of his duty was at least within the knowledge of the defendant."

In the present case no means were provided other than this hasp to enable the plaintiff to re-enter the car when he left it in the performance of his duty under his contract with the defendant. The jury from the evidence might reasonably have inferred that no other means were provided by the defendant because this hasp, if in proper condition, would have served the purpose as well as any other device. Of course, when the hasp was being used for the purpose for which it was primarily intended, the door was closed and a device for assistance in entering not then necessary.

The judgment must be reversed, with costs, and the case remanded with directions to grant a new trial.

Reversed.

Mr. Justice VAN ORSDER, dissenting.

Contempt—Disobedience of Order to Produce Books, Etc.—Habeas Corpus.—Where an order for the examination of a bankrupt under the provisions of section 21a of the Bankruptcy Act contains a clause ordering him to produce thereon all books and other memoranda used by him in the conduct of his business, and he admits that he kept various books in his business which he did not produce and afterwards he does not purge his contempt, it has been held in *Matter of Alper*, 19 Am. B. R., 612, that the court has jurisdiction to make an order to punish him as for contempt and commit him to jail, and that an application for his discharge on habeas corpus will be denied.

## Court of Appeals of the District of Columbia.

ELIZABETH A. BRUNTHAVER, APPELLANT,  
v.

ELIZABETH R. TALTY.

No. 1822. Decided March 31, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 26,648, dismissing a bill for an injunction. Affirmed.

Mr. ANDREW WILSON and Mr. N. W. BARKSDALE for the appellant.

Mr. J. J. DARLINGTON and Mr. W. C. SULLIVAN for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant, Elizabeth A. Brunthaver, appeals from a decree dismissing her bill to enjoin the appellee, Elizabeth R. Talty, from making use of an alley way adjacent to appellant's premises. The cause was heard on bill and answer.

These disclose the following facts: Complainant is the owner of a lot which consists of parts of lots four and three in a square at the corner of 12th and E streets in the city of Washington. This lot fronts 24 or 25 feet on 12th street in lot 4 and extends for 72 feet on a line at a right angle with 12th street to a three-foot alley in lot three, which runs into E street. There is another lot between that of complainant and E street which also extends to the alley. Complainant's lot was conveyed by one Kibbe to Waters and Scott September 15, 1835, reserving the right to use an alley three feet wide running along the west side of said lot, and extending north from E street for forty-nine feet, to be kept open forever by said Kibbe. This is the alley involved. Kibbe also owned the lot claimed by defendant, and on April 9, 1835, conveyed the same to parties, from whom defendant derails title, with the right and privilege to use said alley to be kept open forever. Rebecca E. Cryer, defendant's immediate predecessor in title, received a deed to the lot and the alley privilege in 1876. There was a house on the front part of the lot at that time, and in the same year she erected a brick building on the rear of said lot extending to its boundary, the last three feet of which abutted on the end of said alley. No door opening on said alley was constructed in this wall. In the second story a window was constructed overlooking the alley. Ventilators about one foot square in said wall admitted light and air and overlooked the rear of complainant's premises. The lot was conveyed by Cryer to defendant's husband in January, 1899. All the deeds under which each party claimed under Kibbe were duly recorded. In April, 1903, defendant cut a door in the wall opening in the alley and since said date her tenants have made use of the alley for ingress and egress to and from E street. The alley was open and unobstructed when complainant acquired her title and has remained in that condition.

Complainant's contention is that, by building said wall without having an opening for the use of the alley, the said Cryer abandoned the same and her right thereby became extinguished. She also contends that when she acquired her title she

had the right to assume the abandonment and extinguishment of the right to use said alley, whereby defendant is estopped to assert a right thereto. She made no inquiries concerning the abandonment of the open alley, and no representations were made to her concerning its abandonment.

On this state of facts we think the court was right in dismissing the bill to restrain the use of the alley by the defendant.

The conduct of Rebecca Cryer in building and maintaining the wall without an opening for entrance to the alley amounted to nothing more than nonuser of the easement. Nothing was done by any one else to obstruct her use. Mere neglect to enjoy an easement created by grant has no greater effect to extinguish the right of the grantee thereto than to the freehold to which it is appurtenant. This principle is established by the great weight of authority. For some of these see *Day v. Walden*, 46 Mich., 575, 583; *Arnold v. Stevens*, 24 Pick., 106, 112; *Welsh v. Taylor*, 134 N. Y., 450, 459; *Conabees v. N. Y. C. & H. R. R. Co.*, 156 N. Y., 474, 484; *Perth Amboy, etc., Co. v. Ryan*, 68 N. J. L., 474, 477; *Curran v. Louisville*, 83 Ky., 628, 632; *Edgerton v. Hullen*, 55 Kan., 90, 92; *Lindman v. Lindsay*, 69 Pa. St., 93, 100; *Richmond v. Bennet*, 205 Pa. St., 470, 471; *Kencher v. Voltz*, 110 Ill., 264, 271; *Noll v. Dubuque*, B. & M. R. R., 32 Iowa, 66, 71.

It is unnecessary to review the cases cited on the argument by appellant. None of these go farther than to maintain the doctrine that an easement created by grant can be abandoned and extinguished by certain acts in pais, without deed or other writing. And none hold that nonuser alone will work the extinguishment of the granted right. In the case chiefly relied on by the appellant it was said in the course of the opinion, that ceasing of use, coupled with any act clearly indicating an intent to abandon the right, would have the same effect as an express release. *Vogler v. Geiss*, 51 Md., 407, 410. That expression in the opinion must be considered in the light of the facts of the case, which are quite different from the facts in this case. There the question was not whether the party had abandoned the right by erecting a wall at the entrance to the alley from his own land, but whether he had abandoned it by consenting to the erection, by the owner of the servient estate, of an obstruction of the easement. And it was also said in that case: "If the party be authorized to raise the obstruction complained of by mere parol license, and such license be executed before revocation, and the obstruction be only temporary in duration or partial in effect, the easement is only suspended or modified for the term of the duration of the obstruction raised in pursuance of said license. . . . In such case, after the removal of the obstruction, the right to use the easement as formerly is restored."

There is no way, in our opinion, in which an easement created by grant can be extinguished by abandonment, that is to say, by nonuser, unless there has been, in connection with acts inconsistent with the intent to use, some acquiescence in its obstruction by another for a reasonable period at least, or some representations that would work an estoppel. Nothing whatever was done by the successive owners of the lots abutting on the alley, in this case, to prevent the enjoyment of the easement by the defendant or those under whom she

claims. Defendant's wall did not obstruct the alley, and it remained open to her use at will. Omitting to construct a door in the wall was nothing more than evidence of nonuser of the easement of which she could later avail herself by cutting an opening for the purpose which she did when it suited her convenience. The failure to construct this door into the open and unobstructed alley, before complainant purchased her lot, indicated nothing more, under all the circumstances of the case, that that defendant was not then making use of the easement. No inquiry was made with a view to ascertain if she had really abandoned the right with no intention to exercise it in the future. A necessary element of the estoppel claimed is wanting. Complainant had no right to assume, in the face of recorded titles under which both parties held, and the unobstructed condition of the alley, that defendant had forever relinquished her right to its enjoyment. In this connection it is to be remembered, also, that the grant under which complainant holds extends but seventy-two feet, and is limited to the line of the alley on her side. She took an easement in the alley by her deed, as did the owner of the lot between her and E street, and no greater interest.

The decree will be affirmed with costs.

Affirmed.

**Jurisdiction Concurrent—Two District Judges—Appointment of Referee by One—Other Judge Absent from District.**—Where there are two district judges, each having equal and concurrent authority, *In re Steeie*, 19 Am. B. R., 671, holds that one of them, while the other is absent from the district, has authority to make a valid and binding appointment of a referee in bankruptcy without the concurrence of the other judge; but the absent judge, upon returning to the district while the judge who appointed the referee is holding court therein, may not lawfully set aside the appointment without notice to and without the concurrence of the other judge. An order made by the absent judge upon his return to the district for the sole purpose of removing the referee is without warrant of law and will be set aside as having been improvidently granted.

**Discharge—Obtaining Property on Credit—False Statement in Writing Must be Knowingly False.**—In the case of *In re Collins*, 19 Am. B. R. 688, it has been held, apparently for the first time under the act of 1898, that a bankrupt's discharge will not be denied, where he has obtained property on credit upon a materially false statement in writing unless it is shown that the statement was either knowingly false or made so recklessly as to warrant a finding that he acted fraudulently, and that, where, by reason of the illness of his bookkeeper at the time a bankrupt in good faith prepared from his books a statement in writing of his financial condition for the purpose of obtaining property on credit, an existing liability was left off the books, thereby making the statement materially false, the bankrupt would not be denied a discharge under section 14b (3) of the Bankruptcy Act, as amended.

**Discharge—Libel.**—In the case of *National Surety Co. of New York v. Medlock*, 19 Am. B. R., 654, the Court of Appeals of Georgia hold that a liability on account of a libel is not released by a discharge in bankruptcy.

# Court of Appeals of the District of Columbia.

THE MILLER-SHOEMAKER REAL ESTATE  
COMPANY, APPELLANT,

v.

MAURICE S. STURGEON, APPELLEE.

## ADMINISTRATION; DISTRIBUTION.

A husband who, as administrator of the estate of his deceased wife, has collected a claim for damages against a railroad company for having caused her death, may pay such money over to himself as the sole beneficiary of the estate of his wife, without waiting for an order of the Probate Court directing such payment.

No. 1860. Decided May 5, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,430, overruling a motion for judgment of condemnation. Affirmed.

Mr. L. T. EVERETT and Mr. E. W. R. EWING for the appellant.

Mr. HAYDEN JOHNSON and Mr. THOMAS H. PATTERSON for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District of Columbia overruling a motion for judgment of condemnation against the garnishee, Maurice S. Sturgeon, administrator, in attachment on judgment.

It appears that appellee, defendant below, was the husband of one Mabel C. Sturgeon, who was killed in a wreck on the Baltimore & Ohio Railroad. He was appointed administrator of her estate to settle a claim for damages against said railroad company. By agreement, and with the approval of the court, the claim was settled, the railroad company paying the sum of \$3,800 in damages.

Plaintiff secured a judgment against the defendant on June 27, 1907, for \$115.23. On the following day, it caused attachment interrogatories to be issued against the defendant as administrator of the estate of Mabel C. Sturgeon, deceased. Defendant filed his answer to the interrogatories denying that he had anything in his possession, as administrator of said estate, due or owing to himself individually. The defendant, in his capacity as administrator, was brought into court and examined orally, where he admitted having collected, as administrator, the aforesaid sum from the Baltimore & Ohio Railroad Company, but stated that, on receipt of the money, he immediately turned it over to himself individually, as the sole beneficiary of the estate of his wife, and that he had used the money to pay his personal debts.

The only question for our consideration is, whether or not the estate could be legally distributed without an order of court directing such distribution. Section 373 of the Code provides: "When the debts of an intestate, exhibited and proved or notified and not barred, shall have been discharged or settled, or allowed to be retained for as herein directed, the administrator shall proceed to make distribution of the surplus." It has been held, under similar statutes, that an executor or administrator may make distribution of the

surplus in his hands, after discharging the debts of the estate, without waiting for an order of the Probate Court. In *Donaldson's Executors v. Rabor*, 28 Md., 55, the court, construing a statute similar to the one here under consideration, said: "The law says, after debts are paid, 'the administrator shall proceed to make distribution' to the next of kin, and in case the surplus consists of property in specie and 'he can not satisfy the parties,' he may have them summoned and distribution made under the court's direction, or the property ordered to be sold (Code, Art. 93, sec. 138) and he may appoint a meeting of persons entitled to distributive shares, or legacies or a residue, and make payment or distribution under the court's direction and control (Code, Art. 93, sec. 143). Ordinarily it would be safer for an administrator to pursue the course pointed out by this latter section, but there is no express command of the law that he should do so. The duty is cast upon him, in the first instance, to ascertain who the distributees and persons entitled are. He administers the estate in pais (4 Md., Ch. Dec., 450), and if he pays the right parties their proper shares he is protected, whether it is done under the sanction of the court or not, and it makes no difference whether such payments be made before or after the passing of an account, showing the balance for distribution. Such payments, where estates are solvent, are frequently made before such an account is passed, and in some cases an administrator will be compelled to make them."

The only condition precedent to the making of such distribution by an administrator is that the legal debts against the estate shall have been first paid and discharged. In the case at bar, there were no debts that could be charged against the estate of Mabel C. Sturgeon. Section 1303 of the Code, relating to damages recovered on account of injuries done or happening in the District of Columbia, where the death of the party shall be caused by the wrongful act, neglect, or default of any person or corporation, provides that "the damages recovered in such action shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family, and be distributed according to the provisions of the statute of distribution in force in the said District of Columbia."

We are, therefore, of the opinion that the defendant had the legal authority to pay the amount recovered from the railroad company to himself as the sole heir and beneficiary of the estate of Mabel C. Sturgeon. Having done so, there were no funds in his hands, in fact or in contemplation of law, subject to garnishment at the time plaintiff caused its attachment proceeding to be instituted. The judgment is affirmed with costs, and it is so ordered. Affirmed.

Assets—Bankrupt Purchased Annuity—Adjudication While Contract Executory.—The case of *Smith v. Mutual Life Ins. Co. of New York*, 19 Am. B. R., 705, holds that the contract of a mutual life insurance company to pay a person an annuity of \$1,000 a year for life, beginning July 1, 1916, in consideration of \$2,830, paid by him in 1901, is wholly executory, and his trustee in bankruptcy, in 1907, may elect to cancel the contract and recover the consideration for the benefit of creditors.



## Legal Notices.

## FIRST INSERTION.

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Boudette, otherwise known as Henry Boudet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1908. FREDERICK A. FENNING, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,300. Administration. [Seal.] 22-31

Joseph J. Darlington, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles B. Church, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of May, 1908. CHARLES W. CHURCH, 1012 C St.; S. W.; WILLIAM A. H. CHURCH, 8th and C sts. S. W.; MARY A. CHURCH, 306 11th st. S. W.; JOSEPH J. DARLINGTON, 410 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,281. Administration. [Seal.] 22-31

R. R. Horner, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In the Matter of the Estate of William J. Peters, Deceased. Administration No. 15,125.

## ORDER OF PUBLICATION.

Application having been made by Julia A. Peters and Julia E. Tibbs for probate of the last will and testament of William J. Peters, deceased, and for letters testamentary thereon, it is, by the court, this 28th day of May, A. D. 1908, ordered, that William F. Tibbs, and all others concerned, appear in said court on or before the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Post and The Washington Law Reporter once each week of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 22-31

E. H. Thomas and Jas. Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Extension of Second Street Northwest from Elm Street North to Bryant Street, of W Street from its Present Terminus West of Flagler Place to Second Street, and W Street West of Second Street Eastwardly to Second Street.  
District Court. No. 712.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of the act of Congress, approved January 9th, 1907, entitled "An Act authorizing the extension of Second street northwest from Elm street north to Bryant street, of W street from its present terminus west of Flagler Place to Second street, and of W street west of Second street eastwardly to Second street," as amended by an act of Congress approved May 28th, 1908, entitled "An Act making appropriations for the government of the District of Columbia for the fiscal year ending June 30, 1909, and for other purposes," have filed a petition, an amended petition, and a supplemental petition in this court praying the condemnation of the land necessary for the street extension provided for in the aforesaid acts of Congress as shown on a plat or map filed with the said original petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United

## Legal Notices.

States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the aforesaid street extensions and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid acts of Congress. It is, by the court, this 28th day of May, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 23d day of June, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Post, and The Washington Times, newspapers published in the said District, before the said 23d day of June, A. D. 1908. It is further ordered that a copy of said notice and order be served by the United States marshal or his deputies, upon such of the owners of the land to be condemned herein as may be found by said marshal or his deputies within the District of Columbia and upon the tenants and occupants of the same before the said 23d day of June, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young Clerk, by F. E. Cunningham, Asst. Clerk. 22-11

Geo. F. Collins, Attorney  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Herman L. Livingston, late of the State of Ohio, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1908. WILLIAM M. PORTER, 494 La. ave. N. W., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,002. Administration. [Seal.] 22-31

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Edward Libbey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 28th day of May, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of May, 1908. WILLIAM KING, 1151 16th st. N. W.; HENDERSON SUTER, 3025 N. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,262. Administration. [Seal.] 22-31

[Filed May 28, 1908. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

James H. Whitmore et al. v. Anna M. Whitmore et al. No. 23,758. In Equity.

Upon consideration of the report of Hayden Johnson and Raymond A. Helskell, trustees appointed by the court in the above entitled cause, reporting the sale to Anna M. Whitmore for the price of \$2,500, of part of original lot 12 in square 433, described as follows, viz: Beginning on 7th street 68 feet and four inches from the northeast corner of said square and running thence south on said 7th street 18 feet 6 inches; thence east 69 feet 4 inches; thence north 18 feet six inches; thence east 69 feet 4 inches to the beginning, excepting therefrom the north 8 and 3/4 inches front on 7th street by the depth of 30 feet, it is by the court, this 28th day of May, 1908, ordered that said sale be, and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of June, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The

[Seal] Washington Law Reporter. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 22-31

**Legal Notices.**

James H. Taylor, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary J. Nourse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 22d day of May, 1908. JAMES B. NOURSE, Wisconsin ave. N. W.; RICHARD DOUGLAS SIMMS, 3229 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,159. Administration. [Seal.] 22-31

Ralston & Siddons, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John K. Pfeil, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. CHRISTIANA PFEIL, 204 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,292. Administration. [Seal.] 22-31

G. Percy McGlue, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Ryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. JAMES F. SHEA, 643 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,798. Administration. [Seal.] 22-31

Frank E. Elder, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Robert Henry Payne, Deceased.  
No. 15,270. Administration Docket 38.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret Payne, it is ordered, this 26th day of May, A. D. 1908, that the unknown heirs at law and next of kin of Robert Henry Payne and all others concerned, appear in said court on Thursday, the 2d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-31

J. A. Maedel, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Christian Xander, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of May, 1908. HENRY XANDER, MINNIE ISEMANN, 909 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,278. Administration. [Seal.] 22-31

**Legal Notices.**

Fred'k Elchelberger, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. H. Christian, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 15th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 22d day of May, 1908. THE WASHINGTON LOAN AND TRUST CO., by Fred'k Elchelberger, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,425. Administration. [Seal.] 22-31

Wm. W. Boorman, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Rudolph Hasler, Deceased.  
No. 15,265. Administration Docket --  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Hasler, it is ordered this 22d day of May, A. D. 1908, that Alfred A. Hasler or Alfred A. Harper, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-31

Hamilton, Colbert, Yerkes & Hamilton, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Louise Novel, Deceased.  
No. 15,284. Administration Docket --

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Leonide Delarue, and it appearing to the satisfaction of the court that decedent left no known next of kin, it is ordered, this 22d day of May, A. D. 1908, that the unknown next of kin of said decedent, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-31

**SECOND INSERTION.**

Edwin C. Dutton, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick Luck, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1908. EDWIN C. DUTTON, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,145. Administration. [Seal.] 21-31

Justice blanks of every description for sale at this office.

**Legal Notices.**

**C. Clinton James, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Robert T. Pywell, Deceased.**  
**No. 15,103. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Martha E. Pywell, it is ordered, this 20th day of May, A. D. 1908, that Denzel Pywell, and all others concerned, appear in said court on Monday, the 22d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY**

[Seal] **M. GOULD, Justice.** Attest: **James Tanner,**  
 Register of Wills for the District of Columbia,  
 Clerk of the Probate Court. 21-31

**Wilson & Barksdale, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Jerusha M. Holton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. **FREDERICK A. HOLTON**, 2125 S st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,276. Administration. [Seal.] 21-31

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Charles W. Milbourne**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. **EDITH V. CARRUTHERS**, 8340 1/2 M st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,282. Administration. [Seal.] 21-31

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Frederick Roerber**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. **FREDERICK A. FENNING**, Century Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,285. Administration. [Seal.] 21-31

**Daniel W. O'Donoghue, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Bernard Mullen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1908. **JULIA MULLEN**, 613 8th st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,275. Administration. [Seal.] 21-31

**Legal Notices.**

**Cull & Cull, Solicitors**

**In the Supreme Court of the District of Columbia.**

**James McLaren, Ruth M. McL. Pardew, Eliza P. Walson, Complainants, v. Abbie H. Wilson, and the Unknown Heirs, Devisees, and Allenees of Abbie H. Wilson, Defendants.**

**In Equity Cause 27,718. Doc. 61.**

The object of this suit is to establish title by adverse possession in the complainants to lots 577 and 578 in Uniontown, District of Columbia, as per plat in book Levy Court 2, page 83, in the office of the surveyor for said District. On motion of the complainants, and for good cause shown to the court, it is, this 20th day of May, A. D. 1908, ordered by the court, that the defendants herein, to wit, **Abbie H. Wilson**, and the unknown heirs, devisees, and allenees of **Abbie H. Wilson**, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, newspapers published in the city of Washington, District of Columbia. **ASHLEY**

[Seal] **M. GOULD, Justice.** A true copy. Test: **J. R. Young,**  
 Clerk, by **Wms. F. Lemon**, Asst. Clerk. 21-30

**David Rothschild, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of James Lennon, Deceased.**

**No. 15,252. Administration Docket—**

Application having been made herein for letters of administration on said estate, by **David Rothschild**, it is ordered, this 18th day of May, A. D. 1908, that the unknown heirs at law and next of kin of said **James Lennon**, deceased, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY**

[Seal] **M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-31

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Catherine Heins, Deceased.**

**No. 15,250. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Katie Flammer**, it is ordered this 19th day of May, A. D. 1908, that **Fayette Hirsch**, otherwise known as **Frederick Hirsch**, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY**

[Seal] **M. GOULD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-31

**E. S. Mussey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Andrew Matsen** alias **Andreas Madsten**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1908. **ELLEN S. MUSSEY**, 613 15th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,167. Administration. [Seal.] 21-31

**Legal Notices.**

E. A. Jones and G. C. Shinn, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devisees, and Alienees of such of them as are dead; and the Unknown Heirs, Devisees, and Alienees of Julianna Barry, Deceased.

In Equity, No. 27,648.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and alienees of such of them as are dead; and the unknown heirs, devisees, and alienees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month

for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 29; June 19, 26; July 24, 31.

F. S. Bright, Solicitor

In the Supreme Court of the District of Columbia.

John L. Edwards, Plaintiff, v. The Unknown Heirs, Devisees, or Alienees of Walter S. Chandler et al., Defendants. In Equity, No. 27,219.

The object of this suit is to establish of record by possession the title of plaintiff to parts of original lots numbered ten (10) and eleven (11) in square numbered one hundred and twenty-two (122), in the city of Washington, in the District of Columbia, beginning for the same at a point on the north line of said lot ten (10), seventy-seven feet eleven inches from the northeast corner of said square; thence west on said north line seventy-seven feet eleven inches to the dividing line between lots numbered nine (9) and ten (10); thence south along said dividing line one hundred and eighteen feet one inch to the dividing line between lots numbered eleven and twelve; thence east along said dividing line seventy-seven feet and eleven inches; thence north one hundred and eighteen feet one inch to the place of beginning. On motion of the plaintiff it is this 4th day of May, A. D. 1908, ordered that the defendants, the unknown heirs, devisees or alienees of Walter S. Chandler, Nathaniel Preston, A. Kench, John Ludwick Young, Susan K. Williams, Ellen M. Boggs, Hebe Ashley, Catherine Rhodes, Nancy Rhodes, and William Rhodes, cause their appearance to be entered herein, on or before the 10th day of June, 1908; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for one month

in The Washington Law Reporter and The Washington Herald. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

may 8, 29

Heber J. May, Attorney

Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward E. Holman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1908. EDWARD D. N. WHITNEY, Ouray Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 16,186. Administration. [Seal.] 21-31

**Legal Notices.**

Horace R. George, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret W. Huyett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of May, 1908. EMMA S. HUYETT, LAURA V. HUYETT, 119 Tenn. ave. n. e. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,211. Admn. [Seal.] 21-31

T. L. Jeffords, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Laura L. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1908. LAURA L. PAUL, 79 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,049. Administration. [Seal.] 21-31

**THIRD INSERTION.**

James H. Hayden, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the State of New York and the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Lowrie Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of May, 1908. FRANKLIN B. KIRKBRIDE, 87 Madison Avenue, New York; STIRLING BELL, 2210 Mass. Ave., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,266. Administration. [Seal.] 20-31

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia.

In re Dissolution of the People's Fire Insurance Company of the District of Columbia.  
No. 27,787. In Equity.

It appearing to the court that application has been made to the court in the above entitled cause for a voluntary dissolution of the body corporate, the People's Fire Insurance Company of the District of Columbia, and it appearing to the court that such application, together with the accompanying accounts, inventories, and affidavits required by law have been filed in this court, it is accordingly, upon motion of B. F. Leighton, Esq., attorney for the petitioner, this 11th day of May, A. D. 1908, ordered that all persons interested in the said corporation, the People's Fire Insurance Company of the District of Columbia, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 18th day of June, A. D. 1908, why the said body corporate should not be dissolved. It is further ordered, that a notice of this order shall be published in The Evening Star, a paper of general circulation of the said District, and also in The Washington Law Reporter weekly for three successive weeks, the first insertion to be not less than one month before the said 18th day of June, 1908, being the day fixed

[Seal] for showing cause as aforesaid. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 20-31

**Legal Notices.**

**Mason N. Richardson and Henry C. Stewart, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Matthew Goddard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1908. **MARGARETTA GODDARD**, 927 10th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,205. Administration. [Seal.] 20-St

**J. H. Lichtner, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William A. Armistead**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of May, 1908. **MATTIE ARMISTEAD**, 2314 Naylor Road, S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,212. Administration. [Seal.] 20-St

**Foster, Freeman, Watson, and Coit, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James C. Coit**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1908. **JOHN M. COIT**, 908 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,244. Administration. [Seal.] 20-St

**McKenney & Flannery, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Robert Arthur Hooe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of May, 1908. **JAMES B. NALLE**, 1820 F st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,241. Administration. [Seal.] 20-St

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Catharine Connor, Deceased.**  
 No. 15,234. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, by **Helen Reedy**, the executrix named in said will, it is ordered this 15th day of May, A. D. 1908, that **Clara Connor**, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Legal Notices.**

**Stanton C. Peelle, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Phillip H. Deis**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of May, 1908. **MARY H. DEIS**, 119 E st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,259. Administration. [Seal.] 20-St

**Wm. E. Ambrose, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Ann M. Frain, Deceased.**  
 No. 15,168. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration, with the will annexed, on said estate, to **Henry W. Tippet**, by **Adeline Miles**, it is ordered this 12th day of May, A. D. 1908, that **Sally Shay** and **Lillie Shindle**, both of Lancaster, Penn., and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Wm. A. McKenney, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Thomas C. Sullivan, Deceased.**  
 No. 15,230. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **American Security and Trust Company**, it is ordered, this 12th day of May, A. D. 1908, that **Theodore Sullivan**, **John Sullivan**, **George Sullivan**, **Martha Sullivan**, **McFadden**, **Elizabeth Sullivan**, **Charles Sullivan**, **Samuel M. Sullivan**, **Edith Sullivan**, **James Sullivan**, **Grace Sullivan**, **Sherman**, **Fannie Sullivan**, **Alderson**, **Laurence Miller**, **Clyde Sullivan**, **Emerick**, **Anna J. Stith**, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Leo P. Harlow, Attorney**  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

**Estate of Daniel J. Bragunier, Deceased.**  
 No. 15,248. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **John D. Bragunier**, it is ordered this 15th day of May, A. D. 1908, that **Minnie B. Compton**, **Daniel B. Compton**, **Benson B. Compton**, **Wilson G. Compton**, **Elmer L. Compton**, **Rhul A. Compton**, **Emmanuel M. Compton**, non-resident infants, and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Legal Notices.**

**Oscar Nauck, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Henry Jaeger, Deceased.**  
**No. 15,219. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Armin Jaeger, the executor therein named, it is ordered, this 8th day of May, A. D. 1908, that Christian Jaeger, Caroline Lauterbach, Margurite Soader, Minnie Schultz, Katie Schultz, Lena Schultz, and Annie Dorsett, nee Schultz, summons for whom was returned by the marshal "not to be found," and all others concerned, appear in said court on Monday, the 15th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**The Brennan Construction Company, a Corporation,**  
**Plaintiff, v. The Oblate Missionaries of the Immaculate Conception in the State of New York, a Corporation, Defendant.** At Law, No. 50,025.

The object of this suit is to recover the sum of \$5,611.79 balance due plaintiff for labor, materials, and superintendence, furnished and supplied in the construction of one fire-proof school building at the corner of West and Porter avenues in the city of Buffalo, State of New York, under contract with the defendant bearing date May 1, 1905, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 14th day of May, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court:

[Seal] **THOS. H. ANDERSON, Justice.** A true copy. Attest: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 20-St

**D. W. O'Donoghue, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Term.**

**In re the Estate of Thomas F. Conroy, Deceased.**  
**Administration 12,138.**

**DECREE.**  
 In consideration of the report of the executors filed herein on 14th day of May, 1908, showing that they have balance sale of premises 319 and 321 Commerce street and the lot to the rear and side thereof, in the city of Alexandria, in the State of Virginia, to Francis C. Spinks, for the sum of \$1,200 net cash, and also that they have sold to Ernest C. Balfrow for the sum of \$2,910 net cash parts of lots H and I in subdivision made by William N. Roache of original lots 1, 2, 17, and 18, in square 280, in the city of Washington, in the District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia, in Liber H. D. C., folio 15, beginning at the southwest corner of said original lot 17, where two alleys thirty (30) feet wide intersect; thence north along the west boundary or line of said original lot (17), a distance of twenty-nine (29) feet; thence east forty-five (45) feet to an alley ten (10) feet wide, reserved in deed from William N. Roache, trustee, to James W. Barker, dated January 9, 1873; thence south along the west line of said last-mentioned alley twenty-nine (29) feet to an alley (30) feet wide; thence west forty-five (45) feet to the place of beginning. It is by the court this 14th day of May, 1908, adjudged, ordered, and decreed that said sales be, and they are hereby, ratified and confirmed, unless cause to the contrary be shown, on or before the 16th day of June, 1908. Provided a copy of this decree be published in The Washington Law Reporter once a

[Seal] week for three successive weeks before said last-mentioned date. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 20-St

**Legal Notices.**

**R. P. Shealey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Richard Hendrickson v. Alexander D. Johnson et al.**  
**No. 27,439. Equity Docket No. —.**

The object of this suit is to remove cloud from complainant's title to lots twenty-seven (27), fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), and sixty-six (66), in Emmons and Dent, trustees, subdivision of square five (5), Edgewood, as per plat recorded in Liber County No. 11, folio 44, more particularly described in complainant's bill. On motion of the plaintiff it is this 11th day of May, A. D. 1908, ordered that the defendants, Washington L. Berry, Tiernan B. Berry, William F. Berry, Thomas C. Berry, Maria Hughes Kennedy, Adelaide Savage Nealey, Lillie C. Bowie, Henry A. Berry, Edward L. Berry, and Martha A. Berry, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By the Court:

[Seal] **HARRY M. CLABAUGH, Chief Justice.** True copy. Test: John R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 20-St

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Jane L. Stone Harrison, Deceased.**  
**No. 15,248.**

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate by Benjamin S. Minor and Horace B. Stanton, the executors named therein, it is ordered this 15th day of May, A. D. 1908, that William Evelyn Harrison, and all others concerned, appear in said court on Tuesday, the 16th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. **ASHLEY M. GOULD, Justice.** A true copy. Attest: James Tanner, Register of Wills. 20-St

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William Hirst, Deceased.**  
**No. 15,227. Administration Docket 88.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by Frederick Bex, it is ordered this 8th day of May, A. D. 1908, that Minnie Mason, John Hirst, Samuel Hirst, Lydia Child, Mary Whitlam, and Richard J. Hirst, and all others concerned, appear in said court on Monday, the 29th day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 20-St

**SIXTH INSERTION.**

**J. H. Taylor, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Ellis L. Warfield v. Unknown Heirs, Devisees, and Alienees of Andrew Schofield, or Schofield, and Minnie Fuller.** Equity, No. 27,621.

The object of this suit is to establish complainant's title by adverse possession to lots 11, 12, and 13 of Fuller's subdivision in square 60. On motion of the complainant, it is, this 12th day of March, 1908, ordered that the defendants cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. This order shall be published twice a month during the three months in The Washington Law Reporter and The Washington Herald. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wm. R. Lemon, Asst. Clerk. mar. 20, 27; apr. 17, 26; may 24, 31



# The Washington Law Reporter

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Employers' Liability Act Declared Constitutional.

In *Hyde v. Southern Railway Company* the question involved was as to the constitutionality of the act of Congress of June 11, 1906, commonly known as the Employers' Liability Act, as applied to the District of Columbia. The appeal was from an order of the court below sustaining a demurrer to a declaration in an action by the administratrix of a deceased employee to recover damages for his death alleged to have been caused by the negligence of defendant, and in which the damages were laid at \$20,000 in each count. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, upholds the constitutionality of the act in so far as it applies to the District of Columbia, although it has been held by the Supreme Court of the United States to be unconstitutional in so far as it extends to injuries received, in a State, by employees of a railway company engaged in interstate commerce. The court also passes upon the question of the amount of the recovery in an action under this statute for causing the death of an employee, and holds that it is not limited to \$10,000 as provided by section 1301 of the Code, but that all damages may be recovered.

#### Creditor's Bills; Purchase by Husband in Name of Third Party to Defraud Creditors.

In *Johnson v. Bryant*, the appeal was from a decree subjecting certain real estate to the satis-

faction of complainants' judgments. It appeared that appellants were husband and wife. The husband was a stockholder and director in an insolvent joint stock company which had conducted a savings bank, and fearing judgments against him he sold certain real estate owned by him and thereafter purchased other real estate, the title being taken in the name of a relative of his wife, who immediately conveyed to the wife, though the deed was not recorded until some years later. The wife claimed to have contributed to the purchase of the lot sold by the husband, and that he agreed to pay her one-half the proceeds. The court below decreed in favor of complainants, and the decree is affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb.

#### Foreign Corporations; Service of Process.

In *New York Continental Jewel Filtration Company v. Karr*, the appeal was one specially allowed from an order refusing to vacate a return of service of summons upon the appellant. Appellant is a foreign corporation and had previously been engaged in the execution of a contract for constructing tunnels, but at the time the alleged service of process was made it had removed all its property from the District and ceased its operations, and while the persons upon whom service was had had formerly been in its employ, they were at the time of the service of the summons in the employ of another corporation, some of the officers of which were also officers of the appellant company. The Court of Appeals reverses the judgment in an opinion by Mr. Justice Van Orsdel.

#### Bonds; Contracts With United States.

In *Speir v. United States*, use of Tradesmen's Trust Company, plaintiff was surety on the bond of a party who contracted to furnish certain materials to be used in the construction of an addition to the Soldiers' Home in this city under a contract between one Speir and the Board of Commissioners of the Home, acting for the United States. Its principal made default and at Speir's request plaintiff performed the contract and furnished the materials. On failure of Speir to pay for them suit was brought on a copy of the bond given by Speir to the Commissioners of the Soldiers' Home, which was conditioned as required by the act of August 13, 1894. It was urged in defense that the action could not be maintained because the Soldiers' Home was not a public building, and because the United States was not expressly named as obligee in the bond; but the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the judgment of the court below, which overruled a demurrer to the declaration.



**Condemnation Proceedings; Assessments; Public Charity; Exemptions.**

In *Garfield Memorial Hospital v. Macfarland*, the appeal was from an order of the court below, sitting as a District Court, ratifying and confirming the verdict of a jury assessing benefits against appellant's property in condemnation proceedings for the extension of Eleventh street, in this city. Appellant claimed that, as a purely public charity, and for other reasons, it was exempt from assessment; but the Court of Appeals, affirming the court below, holds, in an opinion by Mr. Justice Van Orsdel, that the district court was without jurisdiction to pass upon the question of appellant's right to exemptions.

**Equitable Lien; Notice.**

In *Bendheim v. Pickford*, the appeal was from a decree of the court below dismissing a bill filed to enforce an alleged equitable lien against real estate. The lien was claimed by virtue of an agreement between complainants and a former owner of the property for whom they were attorneys, and the important question was as to whether the defendant had notice of such lien at the time of his purchase. The trial court held that complainants had failed to establish the fact that defendant had such notice, and the Court of Appeals affirms the decree in an opinion by Mr. Justice Van Orsdel.

**Life Insurance; Failure of Insurer to Furnish Insured Copy of Application.**

In *Metropolitan Life Insurance Company v. Hawkins*, the action was upon a policy of life insurance. The defense was a breach of the warranty contained in the application that insured was in sound health and had not been treated by a physician within a certain period, etc. The trial court held the defendant precluded from making this defense by reason of its failure to deliver with the policy a copy of the application as required by sec. 657 of the Code; and the judgment is affirmed by the Court of Appeals, in an opinion by Mr. Chief Justice Shepard.

**Trusts; Resignation of Trustee.**

In *Moore Printing Typewriter Company et al. v. National Savings and Trust Company*, the appeal was from a decree in a suit wherein the plaintiff sought to be relieved from its position as trustee under a trust agreement with respect to certain stock, and to be permitted to surrender the stock to a new trustee chosen by a majority of those interested as provided in the agreement. The decree below relieved the complainant of its trust and directed the surrender of the stock to the new trustee, thereby relieving itself from liability, unless the appellants should within a time stated, file a cross-bill and obtain a restraining order

with security as required by equity rule 42. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, affirms the decree.

**Building Associations; Contracts; Law Governing Construction of.**

In *Washington National Building and Loan Association v. Pifer* the appeal was from a decree in an action for an accounting by a borrowing shareholder against a building and loan association. The loan was made on real estate in West Virginia, but the bond provided that the contract should be construed with reference to the laws of Virginia, in which State appellant was incorporated, though its principal office was in this District and its business transacted here. The Court of Appeals, in an opinion by Mr. Justice Robb, affirming the court below, holds that the law of this District should govern, and that under that law the agreement was usurious.

Similar holdings were made in *Washington National B. and L. Association v. Conley*, *Same v. Hill*, and *Same v. Nichols*.

**Patent Appeals Decided.**

Per Mr. Justice Shepard: *Andrew McLean Co. v. Adams Mfg. Co.*, affirmed; *Hall's Safe Company v. Herring-Hall-Marvin Company* (2 cases), affirmed; *In re Application of Taylor*, affirmed; *In re Application of Mason*, affirmed; *Smith v. Smith* (3 cases), affirmed.

Per Mr. Justice Van Orsdel: *De Ferranti v. Lindmark*, petition denied; *McArthur v. Mygatt*, affirmed; *In re Application of Faber*, affirmed; *Ehret v. Star Brewing Co.*, affirmed; *Mill v. Midgley*, affirmed.

Per Mr. Justice Robb: *Levy & Co. v. Uri*, affirmed.

**Foreign Bills of Exchange—Protest.**—The New York Court of Appeals held, in the case of *Amsinck v. Rogers*, that where a foreign bill of exchange was indorsed by the drawers to a firm of bankers in the city of New York, who sent it to their agent in Vienna for collection, and such agent failed to demand payment thereof in accordance with the laws of New York, and upon the refusal of the drawees to pay, failed to protest the same and give notice of such protest to the drawers in the manner required by the laws of that state, the latter were discharged from any liability thereunder, notwithstanding the instrument might have been under the laws of Austria a mere "commercial order" for the payment of money of which no protest need be made.

**Vendor's Liability—Failure to Ship.**—The Supreme Court of North Carolina held, in the case of *Sprinkle v. Brim*, that a vendor of chattels who undertook to ship them to a consignee and send the bill of lading to the buyer was liable for their value in case they were lost through his failure to see that they reached the carrier, and to secure the bill of lading.

## Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, APPELLANT,

v.

EUGENE A. ATCHISON, APPELLEE.

### STREETS; CHANGE OF GRADE; NEGLIGENCE; ESTOPPEL.

1. The District of Columbia is not liable for consequential damages caused by the change of grade of a street, unless the work be done in a negligent manner, in which case it would be liable for the injury caused by its negligence.
2. A property owner who consents or requests that material taken from an alley in the rear of his property shall be used for the purpose of raising the grade of the street in front of the property is estopped not only to complain of the change of grade but of any unexpected contingencies that may arise and delay the completion of the work; but such consent will not estop him to complain of negligence on the part of the District officials, either in the manner of placing the material from the alley in the street or in leaving the street in an unfinished and impassable condition for an unreasonable time.
3. Where a property owner, at whose instance an alley has been opened in rear of his property, before any excavation had been made in the alley requested that the material from the alley should be placed in the street in front of the property, thereby raising the grade of the street and lessening the expense chargeable against such owner on account of the opening of the alley, and the work was begun and continued by the District authorities as rapidly as the weather and local conditions permitted until completion, such owner is estopped to claim any damage for any delay caused by reason of bad weather or conditions over which the District authorities had no control.
4. And in such a case it is the duty of the owner to inform himself as to whether the public treasury is in condition to finish the work before entering into such agreement.

No. 1831. Decided April 23, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,841 entered upon the verdict of a jury in an action to recover damages arising from grading a street, etc. Reversed.

Mr. E. H. THOMAS and Mr. H. P. BLAIR for the appellant.

Mr. C. C. LANCASTER and Mr. HERBERT E. SMITH for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an action on the case brought by appellee in the Supreme Court of the District of Columbia against the appellant, defendant below, to recover damages arising from the grading of a street and alley adjacent to his property. On April 4, 1905, appellee, hereafter referred to as plaintiff, purchased lots 49 to 81, inclusive, in block 3, Ingleside, situated on the south side of Ingleside Terrace, between Eighteenth and Nineteenth streets northwest, in the city of Washington. It appears that this property, when purchased by plaintiff, was a natural forest, starting at a point a considerable distance south of plaintiff's property and descending at a somewhat abrupt grade north over the property in question at a point several hundred feet north of Ingleside Terrace. Between April 12, 1905, and March 1, 1906, plaintiff constructed on said lots twenty-nine three-story brick dwellings. Ten of the

houses were completed prior to December 18, 1905.

It also appears that, for five or six years prior to the purchase of the lots by plaintiff, Ingleside Terrace had been a public street, sixty feet wide, with paved sidewalks, cobblestone gutters, cement curb, and gravel roadway from Eighteenth street and Howard avenue to Nineteenth street and Howard avenue. Defendant furnished plaintiff with a grade sheet, before work was commenced on the construction of the houses, showing a fifteen-foot alley at the rear of plaintiff's lots, extending between Eighteenth and Nineteenth streets, and also showing a new grade of the street several feet above the natural grade as it then existed.

In his declaration plaintiff, in substance and effect, alleges that, while plaintiff had said houses in course of construction, defendant, at the request of plaintiff, began opening and grading the alley; that the dirt taken from the alley was dumped in heaps and mounds in said Ingleside Terrace, in front of plaintiff's property; that, when defendant had cut away several feet of dirt from the alley, without paving or completing the same, it wrongfully and recklessly abandoned the work in such ruinous and damaging condition that the property of plaintiff was subjected to the overflow of water, caving and falling earth, which spread over and covered the entire rear of said property to the great annoyance and damage of plaintiff.

It is further alleged that on or about the 15th day of November, 1905, the defendant, through its Commissioners, without authority, and in wilful, malicious, and oppressive abuse of authority, in order to injure the plaintiff, and wholly without regard to plaintiff's rights of property, or the damage to be caused to said real estate and houses thereby, and against plaintiff's protests, maliciously, recklessly, wrongfully, and negligently entered upon said Ingleside Terrace and completely tore up and rendered the same wholly impassable and useless for ingress and egress to and from plaintiff's said property.

Plaintiff further alleged that on or about the 25th day of April, 1906, he protested against the action of the Commissioners in dumping dirt upon said street, and requested that said nuisance and condition be abated and changed; that the said alley be completed and paved; that the street be placed in a passable and useful condition, so that plaintiff and his grantees and lessees should have ingress and egress to and from said property; that, in answer to said protests, the defendant, on or about the 31st day of May, 1906, continued the excavation of said alley and completed the grade of the same, thereafter paving it with brick; that defendant, on or about the same date, somewhat leveled the earth theretofore and then taken from said alley and dumped therein, and raised or filled said street some three or four feet.

It is further alleged that, in this condition, and without raising said street to the grade, as defendant, through its Commissioners, stated it intended to do, and without laying any curbing or sidewalk, the defendant, on or about the 31st day of June, 1906, negligently, recklessly, and wrongfully abandoned the same, and has maliciously, negligently, wrongfully, and unlawfully permitted said Ingleside Terrace, in front of and along the property of plaintiff, against his protests, to remain in such ruinous condition as to deprive

plaintiff, his grantees and lessees, of ingress and egress to and from said property, as they are lawfully entitled to enjoy.

Plaintiff prayed damages in the sum of \$43,500. To this declaration, defendant entered a plea of not guilty in the manner and form alleged. On the issue joined and trial had, a verdict was rendered for plaintiff for the sum of \$5,000. From the judgment entered thereon, defendant prosecutes this appeal.

The record discloses that the first grade of Ingleside Terrace was established in 1902. The street was on this grade at the time that plaintiff purchased the lots in question and was preparing for the erection of his houses in the spring of 1905. At this time the surface at the rear of the lots next to the alley was, in some places, twenty-five or twenty-six feet higher than the level of the street. On April 5, 1905, the loan company, furnishing plaintiff with money to carry on his enterprise, addressed a letter to the Commissioners of the District requesting that it be furnished with an approved grade of both the street and alley. In response to this request, a grade of the alley was furnished, also a grade of the street raising the street from four to six feet above the then existing grade. A blue print map showing this grade was furnished to the plaintiff. Under these conditions, he proceeded, during the year 1905, with the construction of his houses.

On August 30, 1905, plaintiff addressed to the Commissioners the following communication: "Gentlemen: I respectfully request that the alley be graded and paved in the rear of my lots numbered 49 to 81, both inclusive, in block 3, Ingleside." In response to this letter, the matter was taken up by the officers of the District; the legal notice for objections to the opening of the alley was published, as required by law; and a date set for a hearing. Following this the work was ordered on November 9, 1905. The work of excavating the alley was begun on the 29th of December, 1905. Work was continuously carried on until the 17th of January. This work consisted of grubbing out and removing the forest trees standing on the alley site and excavating and hauling dirt. Work on the alley was suspended on the 17th of January and not resumed until the 28th of February. The work was continuously carried on until the 7th of March, when the alley had been excavated to the established grade. It was then discovered that plaintiff had excavated the rear of his lots, in some instances four feet below the grade of the alley. The matter was taken up with the city authorities, and there is evidence tending to show that an agreement was entered into between the city engineer and the plaintiff for the establishment of a new grade of the alley and the street. The witness Hunt, engineer of highways, testified that he was directed by the engineer commissioner to construct "a retaining wall in the alley as a part of the work of grading and opening the alley so as to prevent the dirt from coming into the back yards of these houses. He told the plaintiff that he thought it was a poor plan to do that from his point of view, and that he wanted to avoid it if he could from the point of view of the District, and suggested to the plaintiff that the defendant make a change in the alley grade, and alter it so as to more nearly fit the yards of the houses. Witness also explained that if the alley grade be lowered, it would result in a

large amount of dirt being available to be taken from the alley and placed in Ingleside Terrace, so as to bring it (the Terrace) up nearer the level of the fronts of the houses." This witness also testified that he explained to the plaintiff the advantages of having the grade of the alley lowered to more nearly correspond with the level to which plaintiff had excavated the rear of his lots, and also that plaintiff would have to bear one-half the expense of constructing a retaining wall. The same witness further testified that no positive decision was reached at the time the above conversation occurred, but that later he went to the premises and met Mr. Lancaster, attorney for plaintiff, and plaintiff; that he again explained the advantages of lowering the grade of the alley and raising the grade of the street in order to reduce the grade between the alley and the street as much as possible. He testified that Lancaster talked for some time with the plaintiff, and then returned to him, the witness, assuring him that the plaintiff had agreed that the change should be made. In pursuance of this agreement, witness testified that the grades were changed on April 27, 1906, and approved by the engineer commissioner on April 28, 1906; that "the actual physical effect of which was the lowering of the grade of the alley by, we will say, two feet—it was very little—and the raising of the street by possibly the same amount, possibly a little more, two or three feet, bringing the street up and the alley down, and thus adjusting the grade in front and rear of the property where they were too high and too low, and the work from that date was carried on in accordance with those grades." It further appears that the gas mains had to be lowered before the alley could be changed to the last grade established. Consequently, no further work was done in the alley until May 5th, when work was resumed, the alley excavated to the grade, the dirt removed onto the street, and the brick pavement laid in the alley, which was completed on the 12th of June, 1906.

When the work of excavating and grading the alley was commenced, defendant removed the gutters and sidewalks from Ingleside Terrace. The dirt removed from the alley was dumped in the street and leveled off to some extent, raising the street five or six feet. There is some evidence to the effect that this was done at the request of plaintiff, but this he denies. There is evidence to the effect that the street was thus rendered, at times, impassable for teams for several months. The street sewer, owing to the manner in which the dirt was placed upon the street, was filled up. There was no means of drainage, and water remained after every rain until it soaked into the earth, making the street, according to the evidence of plaintiff, "a perfect mudhole," and the only means of access to plaintiff's houses was by a walk which he had laid on the lower terrace. On March 12, 1906, plaintiff requested the defendant to have Ingleside Terrace brought to grade, leveled, and a pavement laid. To this request defendant replied as follows:

"EXECUTIVE OFFICE  
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,  
WASHINGTON,

March 20, 1906.

Mr. E. A. ATCHISON,  
1316 14th street northwest.

DEAR SIR: In response to your request of the 12th instant that Ingleside Terrace be graded and

sidewalks laid thereon, between 18th and 19th streets, the Commissioners direct me to inform you that the improvement of Ingleside Terrace will have to be made the subject of a special appropriation by Congress. The present surface of the street is so far below the approved grade that it is impracticable to lay sidewalks until provision is made as above stated to bring the street to grade.

Very respectfully, W. TINDALL,  
Secretary."

There is evidence to show that this condition existed up to the last of September, 1906, when plaintiff lost the property at trust sale. Plaintiff, however, alleges in his declaration that about the 31st of May, 1906, when the work of excavating the alley was finally completed, defendant did some leveling on the street. One witness testified that he frequently visited the property during the summer of 1906, and was able to drive over the street, but that it was rough and muddy during the wet weather.

The court instructed the jury, in substance, that streets and alleys are maintained primarily as arteries of commerce for the use of the public generally, and secondarily for the benefit of the individual property owner. The local municipal authorities are vested with full power to determine when a street shall be graded or built. When a street is opened and in use by the public, the authorities are obliged to maintain it in a reasonably good condition to accommodate the needs of the public. In this case no alley had been constructed. Defendant was under no obligation to build the alley, and was not obliged to complete it after the excavation had been begun. Plaintiff can not recover damages for any mere inconvenience he may have suffered by delay in completing the alley. He can only recover damages in the event that defendant carried on the work in such a negligent manner that it caused an extraordinary flow of water upon the property of plaintiff. Every property owner must stand any inconvenience that is necessarily involved in constructing the streets in a reasonably careful manner, but he is not required to bear a damage which is occasioned to his property by the bringing upon his property either of water or of soil through the act of the public authorities. "So that if in that regard you find that the work that the District did do in the alley was done in a negligent way which resulted in bringing either water or soil upon his property, and that the District could have avoided doing that by the exercise of reasonable skill and care in doing as much as they did do, then in that regard he would be entitled to recover. The only other theory upon which he could recover at all in connection with the alley would be in case the District, after it had finished what it did do, left that alley in a condition so that it drained upon his property surface water which would not have come upon his property as the land lay itself. In other words, the District had no right to accumulate, by an alley, surface water and conduct it upon and over the plaintiff's property, in excess of that which would have fallen there by the natural lay of the land. Outside of those two, there is no other theory upon which he can recover for any alleged damage that was done in the work upon the alley."

The court further charged that with respect to the street a different condition exists. When

plaintiff purchased his property the street was there, built and completed. The duty rested upon the District of maintaining the street in a reasonably proper condition for the use of the public. "You observe that, merely for the change of grade in the street, the plaintiff can not recover, nor can he recover for the mere inconvenience that he was put to during the time that would have been necessary to grade the street, using reasonable skill and care; but he can recover if you find that the District put the street in front of his property in such a condition as to render it impassable, and maintained it in that impassable condition for such length of time as would constitute negligence." The District had the right, not only to change the grade, but they had the right to do everything that was reasonably necessary in order to accomplish that change. In changing grade the authorities may make cuts and fills, and the property owner can not complain of anything that was reasonably necessary in order to change the grade; but he can complain if the authorities take an unreasonable length of time to complete the work. The authorities had the right to make the street in front of plaintiff's houses impassable, since it was necessary for the completion of the grade, but they had not the right to put the street in an impassable condition and maintain it in that condition for an unreasonable and negligent length of time.

The jury will have to decide from the evidence whether the street was put in an impassable condition, and, if it was, whether or not it was maintained in such condition an unreasonable and unnecessary length of time. If you find that it was so maintained for an unreasonable and unnecessary length of time, the plaintiff "would be entitled to recover from the District the damages, if any, that he sustained during the interim from what would have been a reasonable time for them to have completed the grading there, up to the time that the plaintiff lost control of the property." The court then instructed the jury on the measure of damages, but as no exception was taken by counsel for defendant to that portion of the charge, it is unnecessary to consider that question.

It is contended that the court erred in giving the following instruction to the jury at the request of plaintiff: "If the jury believe from the evidence that the plaintiff was the owner of said property, and while said houses were under way of construction, or about the completion of the same, the District of Columbia, the defendant, commenced to grade the alley in the rear of said property, and that before the completion of the proposed grade, abandoned the same for an unreasonable time and in an unsafe condition, without pavement and necessary drainage, and in a reckless and negligent manner, while it had the means to complete said grade, or the control thereof, and that because of such acts of the defendant, said property of the plaintiff was unnecessarily subjected to and suffered from overflow of water and loose earth, so that its usefulness was effectually destroyed or impaired, which condition could have been avoided had the defendant used due skill and care, then the plaintiff is entitled to recover such an amount as will compensate him for the damage so sustained." This instruction does not differ in effect from the general instructions given by the court on the same subject. It relates entirely to the matter of

negligence in leaving the alley in a condition whereby plaintiff's property, from overflow, might be destroyed or impaired. It merely emphasizes the instructions already given on this subject. We think that this instruction, taken in connection with the general charge given by the court, in so far as above referred to, constitutes a fair expression of the law.

Counsel for defendant requested the following instruction, which was given by the court: "The court instructs the jury that there has been no legally sufficient evidence that there was any unskillfulness in the manner of the grading of the alley or the manner of the grading of Ingleside Terrace, nor has there been any sufficient legal evidence of gross abuse of authority or discretion in grading Ingleside Terrace." In view of the evidence before the jury for its consideration, we are of the opinion that the court committed error in giving this instruction. There was evidence to the effect that the alley was left in such a condition that the water washed dirt into the cellars of the houses, "ruining the furnaces and making the pipes damp." This evidence tended to show that defendant had unskillfully performed the work and negligently left the alley in the condition described. The question of negligence had been properly submitted to the jury by a clear and able announcement of the law applicable thereto. The above instruction tended to take the consideration of this subject from the jury, and to that extent was in conflict with the general charge of the court. It added nothing to the charge, was confusing to the jury, and should not have been given.

Under the general plan originally adopted for the founding and establishment of the city of Washington, the legal title to all streets is vested in the United States, and, consequently, they may be regulated and controlled either by Congress directly, or by such individuals or corporations as are authorized by Congress. It is conceded in this case, that the Commissioners of the District have full power to change the established grades of streets and alleys within the District, and that no liability can attach to the District for the performance of such acts as are necessary to accomplish such change. But it is contended that the liability consists in the performance of the work in such a negligent manner that the plaintiff suffered a special damage thereby. It is well settled that plaintiff could not recover for any mere inconvenience suffered, or temporary loss occasioned, by reason of the change of this grade. Private interest must yield to public accommodation. A property owner in a city can not require the grade in the street to conform to his convenience at the expense of that of the public. The District is not liable for consequential damage caused by the change of grade of a street, unless the work be done in a negligent manner, in which case, it would be liable for the injury caused by its negligence. In this case, it is not the grading of the street for which complaint is made. The whole question here is one of negligence. It appears that no permanent damage was done to the property of plaintiff. There is nothing to bring the case within the provision of the constitution forbidding the taking of private property for public use without just compensation. Plaintiff knew of the proposed change of grade before he erected his houses, and seems to have made no objection.

He constructed two terraces in front of his houses; the lower one was on a level with the street, and the second one on a level with the proposed grade which had been established before building was commenced.

If plaintiff assented to the use of the material from the alley for the purpose of grading the street or requested that it be so used, he would not only be estopped by such consent from complaining of the change of grade, but of any unexpected contingencies that might arise and cause delay in the completion of the work. In other words, if the material taken from the alley was placed on the street at the request of plaintiff, he is chargeable with equal notice with defendant of any unforeseen cause of delay that might arise, not directly chargeable to the independent act of defendant. It can not, however, be presumed that in giving his consent to, or requesting the city to place the dirt on the street, he waived his right to complain of negligence on the part of the officers of defendant, either in the manner of putting it there, or in leaving the street in an unfinished and impassable condition, unless he subsequently did some act that would be equivalent to a waiver of any claim that he may have had for such negligence.

This brings us to the consideration of the principal question involved in this appeal. Evidence was offered on behalf of the defendant to the effect that before any excavation was made in the alley plaintiff requested that the dirt taken from the alley should be hauled upon the street and used to bring the street up to the grade that had been furnished him by defendant. We are impressed with the force that should be given this evidence in connection with a fair consideration of the facts in this case. The physical conditions there existing were such that the plaintiff would not only be benefited by the proper removal of the dirt from the alley to the street in the adjustment of the grades, but also from the fact that one-half of the expense of excavating and constructing the alley was chargeable against his property. He had a direct financial interest in having the material from the alley disposed of at the least possible expense. The probability of the existence of such an arrangement is further emphasized by evidence tending to show that a second agreement was entered into between the plaintiff and the officers of defendant, as late as April 26, 1906, by which the grade of the alley was lowered and the street raised and in which it was agreed that the material from the alley should be deposited in the street. This property was situated upon a hillside. It was manifestly a great advantage to the plaintiff to have the alley excavated to as low a grade as possible and the street raised to a correspondingly high grade. The important bearing that such an arrangement, if found to exist, would have on the final outcome of the case, called for the submission of this point to the jury with proper instructions. Defendant submitted several prayers on the effect of such an arrangement between the plaintiff and defendant, which were refused by the court. At the conclusion of the court's charge to the jury, counsel for defendant stated, "I would like to ask your Honor whether you desire to say anything to the jury about the effect of the consent of the plaintiff to the dumping of the dirt on Ingleside Terrace, if they find any such thing in the evidence."

"The Court: I do not think it has anything to

do with the outcome of the case for this reason. The District had a right to put the dirt there, whether he consented to it or not, and if he did consent, yet, it is not to be presumed that he consented that they should maintain it there for an unreasonable length of time."

In view of the facts presented by the record in this case, we think the refusal of the court to submit this question to the jury with proper instructions was error. We are of the opinion that if the plaintiff requested defendant to place the material taken from the alley upon the street, and this work was thereafter begun and continued by defendant as rapidly as the weather and the local conditions would permit until its completion, plaintiff would be estopped from claiming any damages that he may have suffered during said period.

This agreement, if found to exist, relieved the defendant of any responsibility for inaugurating the work at a season of the year when the uncertainty of the weather would probably interfere with the speedy completion of the work. There is evidence to the effect that the work in reducing the alley to the original grade was delayed because of the unfavorable condition of the weather. This was a condition for which the defendant was not responsible, and the probability of such a condition arising was something of which plaintiff was bound to take notice when he requested defendant to open the alley and place the dirt upon the street. It, therefore, follows that if plaintiff requested the dirt to be placed upon the street at a time when there was great uncertainty as to defendant's ability to complete it within a reasonable period, he would be estopped from claiming any damage for any delay caused by reason of bad weather or conditions over which the defendant had no control and of which the plaintiff was bound to take notice between the time that work was begun on the alley, December 29, 1905, and the date of its final completion, June 12, 1906.

It is contended that the defendant was not in a position to finish the work for lack of funds, and that the Commissioners, being cognizant of that fact before the work was commenced, were not justified in beginning a work which they could not finish. Therefore, it is insisted that they had no authority to proceed with the grading of the street, as evidenced by their letter of March 20, 1906. We think plaintiff, as a citizen and taxpayer, was chargeable with notice of the condition of the public treasury. At least, if he requested that the material taken from the alley be deposited in the street, it was his duty to inform himself of the condition of the appropriation before entering into such an arrangement. The last change of grade, which defendant insists was made by agreement with plaintiff, was decided upon April 28, 1906, more than a month after the letter referred to was written. If plaintiff entered into this agreement, he did so knowing the condition of the treasury and the lack of power on the part of the Commissioners to finally complete and pave the street. The Commissioners had power to excavate and pave the alley, half of the expense of which was borne by plaintiff. They had the power to remove the material from the alley into the street, which could be done at less expense than to move it to any other point. This saving of expense was shared by plaintiff. It does not appear, however, that defendant was pre-

vented from carrying on the work up to the date of completion of the alley by reason of the condition of the treasury. The letter related to the completion of the street and not the alley. The alleged arrangement for depositing the material from the alley in the street was a continuing one between the parties until the material was all removed, and, inasmuch as the defendant had the power, and presumably the means, to complete the alley and deposit the material in the street, it is apparent that the condition of the treasury could have no bearing upon the case until after the agreement was concluded and the alley constructed.

At this point, however, defendant for lack of funds was prevented from proceeding further. Plaintiff's brother, a witness introduced on his behalf, testified that, during the summer of 1906, plaintiff excavated foundations for two houses and, by permission of defendant, hauled the dirt into the street. On this point the record discloses no conflict. Thus we find plaintiff, with full knowledge of the condition of the treasury, assisting in bringing the street to the point where it was impossible to complete it until there was a further appropriation by Congress. And, when the defendant was in a position where it could proceed no further, we find plaintiff still engaged in hauling material on the street. It is difficult to conceive just how plaintiff, under the evidence above referred to, can charge the defendant with negligence for proceeding without sufficient funds to complete the work.

It must be remembered that we express no opinion as to whether or not the evidence is sufficient to establish the existence of an agreement relating to the removal of the material from the alley to the street, or the last change of grade, or the depositing of dirt by plaintiff on the street during the summer of 1906, but, considering its great importance in this case, it was error for the court not to instruct the jury as to the consideration that should be given it, if found to be true, in arriving at a proper verdict.

The judgment is reversed with costs, and the cause remanded with instructions to grant a new trial.

Reversed.

Jurisdiction to Administer Individual Estate of Solvent Partner, upon Partnership Adjudication.—In the case of *In re Bertenshaw*, 19 Am. B. R., 577, a partnership was adjudicated a bankrupt, but none of the partners was adjudged a bankrupt. Application was made to the court to order an unadjudicated partner to turn over his property to the trustee of the partnership estate for administration in bankruptcy. It was held that the court of bankruptcy was without jurisdiction to summarily take and administer in the proceedings against the partnership, the individual estate of the solvent partner without his consent.

It was held, however, in the *Bertenshaw* case, that the partnership creditors may pursue unadjudicated partners by actions at law and suits in equity before, during and after the proceedings in bankruptcy against the partnership; and that the discharge of the partnership, where the partners are not adjudicated bankrupt, does not discharge the partners from their liability for the partnership debts.

## Court of Appeals of the District of Columbia

HUGH HARTEN, APPELLANT,

v.

ANDREW D. LOFFLER ET AL.

REAL ESTATE BROKERS; ACTING AS AGENT FOR BOTH  
VENDOR AND VENDEE.

1. Without at least the full knowledge and consent of both vendor and vendee, even if then, a real estate broker can not act as the agent and representative of both in the same transaction.
2. Where a real estate broker, without the knowledge of both vendor and vendee, acts as the agent of each of them, he is guilty of a breach of his contract and commits a fraud by his concealment. A contract under such conditions is contra bonos mores, and the law, acting in harmony with morals, will not enforce it.
3. In an action by real estate brokers for commission, where it appeared that plaintiffs had approached the vendor as agents of the vendee but without disclosing such agency; that the vendor had authorized them to act as his agent for sale at \$12,000, and promised to pay a commission of \$300, but that the main efforts of plaintiffs had been to induce the vendor to accept a less amount, which he declined to do, whereupon the vendee agreed to pay \$12,000, it was held that a claim founded on such conduct could not be enforced, and that the jury should have been directed to return a verdict for the defendant.

No. 1819. Decided May 5, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,992, entered upon a verdict in an action to recover commission for finding a purchaser for real estate. Reversed.

Mr. L. A. BAILEY for the appellant.

Mr. LEON TOBRINER for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellees, as plaintiffs below, brought this action against appellant to recover the sum of \$300 for services rendered in obtaining a purchaser for certain real estate in the District of Columbia.

The allegations were that defendant was the owner, on April 1, 1905, of certain land, with improvements thereon, which he wished to sell; that he employed plaintiffs, who were real estate brokers, to find a purchaser; that on April 27, 1905, they found a purchaser, at the agreed price of \$12,000, with whom the defendant entered into an agreement for the conveyance of said premises for said sum, which he afterward refused to perform; that in consideration of their services defendant agreed with and promised plaintiffs to pay them the said sum of \$300, which he has failed and refused to do. The declaration concluded with the common counts for money payable, for services rendered, etc.

The defendant filed pleas denying the promise and indebtedness as alleged, on which issue was joined. Judgment for plaintiffs was entered June 1, 1906.

At that time an action brought by the purchaser for breach of the said contract against Harten was pending, and some questions involved therein were injected into this proceeding. So far as those are concerned, they were settled by the judgment for plaintiff therein, which was affirmed May 7, 1907. *Harten v. Loffler*, 29 App. D. C., 490; 35 Wash. Law Rep., 386.

The testimony of the plaintiffs tended to show that a contract was entered into between Harten and Ernst Loffler, on April 27, 1905, whereby

the former agreed for a consideration of \$12,000, of which \$250 were deposited, to convey to the latter the premises on Brightwood avenue, and to transfer his license. He also agreed to use his efforts to secure signers for the transfer of said license to Loffler. It was this agreement which Harten refused to perform, and the breach of which was the subject-matter of the case above referred to.

One of the plaintiffs, Andrew D. Loffler, after proving partnership with Jarrell in the real estate business, testified substantially as follows: That about February 22, 1906, he went to see Harten and told him that he was in the real estate business and had heard his place was for sale. Told him he could probably find a purchaser. He said if I could get a purchaser for \$12,000 he would sell, I knew that Ernst Loffler wanted to get a place on the Brightwood Road; he had told me he wanted a place for a home and a barroom business. Told him he could get Harten's place for \$12,000, and he told me to offer Harten \$11,000. So I offered Harten \$11,000 which he refused. We finally came to an agreement that Loffler would take it for \$12,000. Saw Harten with reference to this sale between February 22 and April 27, 1906, about three times a week. I made him an offer for E. Loffler of \$11,000. The purpose of my visits to him was to get the property for that price, and I kept on going to see him. When E. Loffler was satisfied to take the place I told Harten I could get a buyer and that included a commission of three per cent. He said "that is too much;" I said, "will you be satisfied to give me \$300." He said: "Yes, I will pay you for all your trouble." Other testimony of the witness relating to the description of the property intended to be conveyed, it is unnecessary to recite for the reason that it is rendered irrelevant by the decision in *Harten v. Loffler*, supra.

On cross-examination he said: That the reason he went out to see Harten was that he had heard his place was for sale and he knew that E. Loffler wanted to buy one on that road. E. Loffler was one of those who told me the place was for sale. He came to me about two months before I saw Harten and said: "You are in the real estate business; if you can get that place I will buy it through you." He spoke to me again before I went to see Harten. He said I should find out if Harten's place was for sale and what he wanted for it. I said I would do it. He said he would buy it. I had no talk with him about my commission. I could not charge the man that bought the property a commission; I never did. The man that sells the property generally pays the commission. (This was objected to as not responsive to the question asked, and the same was asked to be stricken out. The refusal to do this was excepted to.) When Harten asked me, on my first visit, for whom I wanted the place, I said: "Never mind; I will tell you later on." The reason for this is that if a man has a customer for a piece of real estate, I do not think he would tell the man who the customer is; he would not need an agent then; he would sell it without an agent. Two or three weeks afterwards I told him who the purchaser was, saying: "Now that you are satisfied to pay me my commission I will take the man out and show him the property." That was the day before I took Loffler out. When Richards was writing the agreement, and before it was signed, I said he



ought to put in it, "subject to three per cent commission." He said: "Never mind; that is all right." I do not think he said he had nothing to do with the commission, but will not say positively that he did not say so. I told him \$300 would be satisfactory, and he said: "All right; I will pay you for your trouble. My word is my bond." "It is a fact that I went out there for the sole purpose of getting this business and this place for Ernst Loffler. He was the customer I had for the place." "Loffler told me to offer \$11,000 for it. I told Harten I had an offer of \$11,000 for it and he said \$12,000 was the lowest he would take for it. I did not tell him who made that offer. The necessity for so many visits to Harten was because I was trying to get it for \$11,000. Mr. Loffler told me he would not want to pay more than that amount and I was trying to get it for that. I told Harten I had an offer of \$11,000 for it. He always refused that. I was interested both ways; I was trying to get it as cheap as I could for Mr. Loffler and I was trying to get all I could for Mr. Harten." He further testified that Harten offered him \$100 to get him out of the trade. He said: "Loffler, how can I get out of this? I said: 'The only way to get out is to turn the property over to Mr. Loffler. You are getting a fair price for it.' He threw a check book down on the table and said: 'You can get me out of it.' I told him it would not be right; it would not be business. I spoke up for Mr. Loffler. I said: 'He had his deposit up, and he had bought the place, and his place was sold in Georgetown and that put him out of the whole thing, and the man ought to have the place.'"

Ernst Loffler, called by the plaintiffs, testified to the purchase, attempt to perfect the same, etc. On cross-examination he said that he had spoken to Andrew Loffler about getting a little place in the country, and he came and said he had found a place, but did not tell him at first it was Harten's. Was probably a month before the contract was signed that he had told witness it was Harten's place. He spoke to me about Harten's place before I spoke to him about it. The first I heard about Harten wanting to sell was from Hood or Burkart. I then had a conversation with Richards about it, and "after that I went to Andy Loffler and sent him to negotiate with Harten about a month before the agreement was signed. I never had any conversation with Andy Loffler about Harten's place before that time. Mr. Loffler told me about the property first. In my suit in this court against Harten, for breach of that agreement, I think I testified that after Richards told me Harten's property was for sale, I went to Andrew Loffler and sent him to negotiate with Harten, and also testified that I told Harten that I wanted the business."

The testimony on behalf of Harten was chiefly directed to the limits of the property actually offered for sale, which was not described in the contract. In regard to the actual matter in controversy he said that Andrew Loffler came to him and wanted to know if he would sell him the property for the same price he had offered it for to Burkart. Said he would if the engagement with Burkart failed. He said he was in the real estate business and was not buying for himself, but for a friend. When asked the name of his friend he said: "I will tell you later." I said if it is for Ernst Loffler I will not sell to him at any price. After the deal with Burkart was off he

called again and was told he could have it for the price named, and when asked the name of his client, said: "I will tell you in due time." About a month later he brought Ernst Loffler out. The first conversation about a commission was after Andrew Loffler had got part of the signers for a transfer of the license. He said: "Who is going to pay me my commission?" That was after the contract was signed. I said: "Whoever employed you. I haven't got anything to do with it. I am selling my place independent of everything. I have no lawyer and am selling it on my own responsibility." He said: "Can not you pay part?" I said: "So far as commissions are concerned I will pay nothing. You are not entitled to anything. You are buying the place for another party. If I came down and engaged you to sell my place I would be entitled to pay commissions then." He said: "Well, somebody will have to pay me." I said: "Whoever employed you will have to pay you." He also denied the statement of Andrew Loffler that he had produced his check book and offered him \$100 to get him out of the contract.

The defendant asked the court to instruct the jury to return a verdict for him on the ground that the evidence showed that plaintiff was employed in the transaction by Ernst Loffler and not by the defendant, as well as claiming commission upon a sale that was never made. This the court refused, and defendant excepted. The court, therefore, charged the jury that whether defendant employed plaintiff to effect the sale was a question of fact for them to settle; that the burden was upon the plaintiffs to show that they were employed by Harten to sell the property, and that they sold the same pursuant to said employment; in other words, that the sale was effected by plaintiffs as the duly authorized agents of defendant, for the particular purpose of selling this property. And second to show that he had a contract for a commission of \$300. The greater portion of the charge was directed to the controversy between the defendant and the purchaser as to the boundaries of the property contracted to be sold, about which the agreement was uncertain. In conclusion, he charged that if the plaintiff was employed to sell the whole of defendant's property, and he did sell it, the duty of the jury was to return a verdict for plaintiff for the full amount of \$300. This charge was excepted to.

The only question material to the determination of this case arises on the error assigned on the exception taken to the refusal of the court to direct a verdict for the defendant.

The law is quite liberal in its recognition of the right of a real estate agent or broker to recover reasonable compensation from the owner of property who, desiring to sell the same, contracts for, or accepts his services in finding a purchaser ready and able to pay the price. On the other hand, it is a thoroughly well established principle that, out of consideration for human weaknesses, the law will not permit such brokers, and others occupying fiduciary relations to put themselves in a position where they are subject to the demands of conflicting duties. Without, at least the full knowledge and consent of both vendor and vendee, even if then, one can not act as the agent and representative of both in the same transaction. The duty of an agent for the vendor is to obtain the highest possible price for his property;

of the agent for the purchaser to buy it for the lowest price. These duties are so irreconcilable and conflicting that they can not be performed by the same agent without danger that he will sacrifice the interests of one to the other, or both to his own when his commission is dependent upon the consummation of the sale. If he so acts as the agent of each without the knowledge of both, he is clearly guilty of a breach of his contract, and commits a fraud by his concealment. A contract under such conditions is *contra bonos mores*, and the law, acting in harmony with morals, will refuse to enforce it. *Raisin v. Clark*, 41 Md., 158, 161; *Farnsworth v. Hammer*, 1 Allen, 494, 495; *Rice v. Wood*, 113 Mass., 133, 135; *Marsh v. Buchan*, 46 N. J. Eq., 595, 597; *Bell v. McConnell*, 37 Ohio St., 396, 399; *Capener v. Hogan*, 40 Ohio St. 203; *Bollman v. Loomis*, 41 Conn., 581; *Murray v. Beard*, 102 N. Y., 505, 508; *Wilkinson v. McCullough*, 196 Pa. St., 205, 208; *Warrick v. Smith*, 137 Ill., 504; *Hafner v. Herron*, 165 Ill., 242, 247.

Applying the principle above stated to the evidence offered on behalf of the plaintiffs, we are of opinion that the court should have directed a verdict for the defendant. It is clear that Andrew Loffler visited Harten at the suggestion, and on behalf of Ernst Loffler, who directed him to inquire if the property was for sale, and at what price. He said: "I went out there for the sole purpose of getting this business and this place for Ernst Loffler." That he had no agreement for, or no intention of charging compensation for his services, if such be the case, did not prevent the relation of principal and agent from attaching, and bringing his principal under an implied promise to pay the value of his services. He did not disclose this agency to Harten. Without disclosing the name of the proposed purchaser, whom he claimed to have found, he made the authorized offer of \$11,000, which Harten declined to accede to, having fixed his price at \$12,000. The many visits made were thus explained: "The necessity for so many visits to Harten was because I was trying to get it for Loffler." Accepting the truth of his statement, which must be done on the motion to direct a verdict against him, to the effect that Harten authorized him to act as his agent for sale at \$12,000, and promised to pay him a commission of \$300 it appears that instead of forwarding that object, as he was in duty bound, he was trying to induce him to reduce the price in the interest of his first principal. Nor does it appear from the testimony that Ernst Loffler was informed that he was also acting as agent for Harten. The manner in which he attempted to perform these inconsistent and irreconcilable obligations to each principal, appears from the following statement: "I was interested both ways; I was trying to get it as cheap as I could for Mr. Loffler, and I was trying to get all I could for Mr. Harten." This alternate persuasion was practiced upon parties adversely interested, by one whom each had the right to believe was acting solely in his own interest. That Harten did not yield to his persuasion while Loffler did, does not affect the question of his right to recover from Harten for his services, either upon an implied or an express contract. The law will not give enforcement to a claim founded on such conduct.

The authorities cited on behalf of the appellee go no farther than to hold, that where one acts as

a middleman, merely bringing vendor and vendee together, to make their own contract, without aid, advice, or interference to, or on behalf of either, he may obtain compensation from both even without knowledge by one of such arrangement with the other. *Ramey v. Donovan*, 78 Mich., 318, 329; *McLure v. Luke*, 154 Fed. Rep., 647; *Manders v. Croft*, 3 Colo. App., 236, 238; *Orton v. Schofield*, 61 Wis., 382, 384; *Rupp v. Sampson*, 16 Gray, 398, 401; *Knass v. K. B. Co.*, 142 N. Y., 70, 75.

Whether this doctrine be sound to the full extent of want of knowledge by the respective parties, it is unnecessary to inquire, as there is nothing in the facts of this case to which it can be applied. Andrew Loffler was no such "middleman."

For the error pointed out the judgment will be reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion. Reversed.

**Receiver—Sale of Property—When Order for Will be Set Aside.**—In the case of *In re Harris*, 19 Am. B. R., 635, it has been held that an order directing a sale by a receiver in bankruptcy should only be granted upon a petition setting forth that the property is in whole or in part perishable by nature or that it will greatly deteriorate by handling in due course of administration; and an order granted upon a petition which alleges simply that the costs and expenses of keeping the property will be accumulated if a sale is not ordered, will be set aside.

**Pledge—Deposit of Securities with Stockbroker.**—The Supreme Court of the United States has very recently held, in the case of *Thomas v. Taggart*, 19 Am. B. R., 710, that, where a customer of a firm of stockbrokers, upon opening an account or in the course of dealings for speculative purposes, deposits securities under an agreement that they shall not be sold except to meet marginal requirements on account of losses, the transaction constitutes merely a pledge of the securities, and where the brokers hypothecate them to obtain a loan to themselves the customer is entitled to recover the securities, or their proceeds, from the trustee in bankruptcy of the brokers.

**Preferences—Customer of Bankrupt Stockholder Not a "Creditor."**—The United States Supreme Court has also held, in another case, decided in April, 1908 (*Richardson v. Shaw & Davidson*, 19 Am. B. R., 717), that where, by agreement, a stockbroker pledges his customer's stocks upon general loans, the customer for whom the stocks are carried on margin by the broker is not a creditor and does not receive a voidable preference where, within the four months' period, he closes the transaction, pays the balance owing the broker, and receives stocks worth more in the market than the sum paid to take them up.

**Discharge—Assignment of Future Wages—Action to Enforce.**—In the case of *Citizens' Loan Ass'n v. Boston & Maine Railroad*, 19 Am. B. R., 650, it is held that an assignment of wages to be earned in the future, made by the assignor prior to his adjudication as a bankrupt, without fraud, and upon sufficient consideration to secure a valid subsisting debt, and duly recorded, is enforceable after the bankrupt has been granted his discharge, though the assignee did not prove his debts in the bankruptcy proceedings.

**Delivery to Carrier Before Shipment.**

The United States Circuit Court of Appeals for the Eighth Circuit held, in the case of *Platt v. Lacocq*, that the rules and practice of an express company to refuse to receive packages of specie and currency for transportation from a bank having a burglar-proof vault in the city where the packages were tendered on the day preceding the departure of the only trains which carried express matter to the destinations of the packages, and which left at various times between 6.29 and 8.00 in the morning, were not unreasonable or unjust. The court said that while a common carrier must receive at reasonable times goods of the kinds it undertakes to transport, the law imposes no duty upon it to receive money or goods, and thereby to assume liability for their safe-keeping and insurance, an unreasonable time before the transportation can begin.

**Attachment—Sheriff Delivered Property to Claimant after Notice of Bankruptcy Proceedings—Order for Return of Property.**—In the case of *Matter of Luffy*, 19 Am. B. R., 614, it appeared that attachments were levied on property of a debtor, which was taken possession of by a sheriff, and thereafter a sheriff's jury found the property to belong to a third party, and the first attaching creditor withdrew his attachment, and meanwhile a petition in bankruptcy had been filed against the debtor, and both the claimant and the sheriff had notice thereof prior to the delivery of the property to the claimant. It was held that such delivery was in derogation of the bankruptcy proceedings, and that the bankruptcy court would order the goods, or their value, to be returned to the receiver in bankruptcy.

**Corporations—Extension of Receivership in Bankruptcy to Corporate Assets Controlled by Partnership.**—In the case of *In re Ruger, Kapner, & Altmark*, 19 Am. B. R., 622, it appeared that 99 per cent of the stock of a manufacturing corporation was owned by a partnership and the remainder of the stock was held by relatives of one of the partners, who, as officers and directors of the corporation, maintained its business for the benefit of the partnership. It was held that the corporation was a mere adjunct of the firm, and upon its adjudication a receivership in the bankruptcy proceedings would be extended to the property in possession of the corporation as a part of the assets of the partnership.

**Sale—Condition—Buyer's Order.**—The Supreme Court of North Carolina held, in the case of *Whitlock v. Auburn Lumber Company*, that property sold upon condition that title shall remain in the seller until the price is paid, and retained in the seller's possession subject to the buyer's order, was constructively in the possession of the buyer, so that the loss, in case of its accidental destruction, would fall on him.

**Limitations—Stock Dividends—Payment.**—The Supreme Court of Nebraska held, in the case of *Bosler v. McShane*, that the payment of dividends upon the stock of a corporation assigned to the payee by the maker of a note as collateral security, if paid within the period fixed by the statute of limitations after such assignment, and the application thereof as payments upon the note, stay the running of the statute of limitations.

**Banks—Forged Indorsements—Recovery.**—The Supreme Court of Pennsylvania held, in the case of *Libby Brothers Glass Company v. Farmers' & Mechanics' Bank of Sharpsburg, Pa.*, that where checks drawn upon other banks in favor of a depositor of a bank are cashed by it on forged indorsements, and it subsequently receives the amount of such checks from the drawee banks, the depositor can not recover such moneys from it as money received for his use.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

Ralston & Siddons, Solicitors

In the Supreme Court of the District of Columbia.

*Adele S. Bartley v. Julia R. Buchignani (nee Rickman), E. R. Rickman, Mary R. Steever (infant).*

No. 27,770. Equity Docket 61.

**ORDER OF PUBLICATION.**

The object of this suit is to obtain a construction of a deed from one Francis Mejaskey and wife to Mary R. Steever, West Steever, James N. Rickman and the complainant, Adele S. Bartley, conveying all of lot ninety-one (91) in said Mejaskey's subdivision of lots in square one hundred and ninety-one (191), situate and being in the city of Washington, District of Columbia, said deed being recorded among the land records of said District of Columbia, on November 12, 1889, in Liber 1481, at folio 376, et seq., and for the partition of said lot. On motion of the complainant, it is this 4th day of June, A. D. 1908, ordered that the defendants, Julia R. Buchignani, E. R. Rickman and Mary R. Steever, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published

at least once a week for three successive [Seal] weeks in The Washington Law Reporter.

(Signed) HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-31

Henry H. Glassie, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Roderick Cochrane, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of June, 1908. ALISTER COCHRANE, 60 The Kenesaw, Wash., D. C., by Henry H. Glassie, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,546. Administration. [Seal.] 23-31

## Legal Notices.

E. A. Jones and G. C. Shinn, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Thomas R. Harney, Plaintiff, v. Griffith C. Barry et al.,  
Defendants. In Equity, No. 27,648.

## ORDER OF PUBLICATION.

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is this 4th day of June, 1908, ordered that Griffith C. Barry, Ann Barry, Mary F. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said return day. HARRY M. CLABAUGH, Chief Justice. A true copy.  
[Seal]  
Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-St

R. A. Ford, Attorney  
In the Supreme Court of the District of Columbia,  
Holding the Probate Court.  
Estate of Mary E. Loeffler, Deceased.  
Administration, No. 15,220.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George W. Loeffler, it is ordered, this 4th day of June, A. D. 1908, that Harry P. Loeffler, and all others concerned, appear in said court on Monday, the 13th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 23-St

Jno. B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edmund E. Masson, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 25th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Elcheberger, Trust Officer, by Jno. B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,391. Administration. [Seal.] 23-St

Jno. B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth B. King, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 22d day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Elcheberger, Trust Officer, by Jno. B. Larner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,468. Admn. [Seal.] 23-St

## Legal Notices.

Jas. B. Archer, Jr., and John L. Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eliza C. Eli, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of June, 1908. DANIEL E. ELI, 1308 35th st. N. W.; JAMES B. ARCHER, JR., 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,807. Administration. [Seal.] 23-St

F. G. Coldren, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of John Brown, Deceased.  
No. 15,284. Administration Docket 88.

Application having been made herein for letters of administration on said estate, by Isidor Kaufman, it is ordered this 1st day of June, A. D. 1908, that all heirs at law and next of kin, and all others concerned, appear in said court on Monday, the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-St

B. F. Leighton and C. Clinton James, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Lorraine Lippard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of June, 1908. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,128. Administration. [Seal.] 23-St

Joseph H. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Ida D. Bailey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of June, 1908. LA FAYETTE M. HERSHAU, 1460 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,256. Administration. [Seal.] 23-St

Jas. B. Archer, Jr., John L. Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harry Coggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. ERNESTINA A. COGGINS, 1640 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,258. Administration. [Seal.] 23-St

**Legal Notices.**

**J. J. Darlington and Leon Tobriner, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Christiana Strauss, Deceased.**  
**Administration, No. 15,228.**

Application having been made for the probate of the last will and testament of said deceased and for letters testamentary on said estate by Hugh A. Kane, the executor therein named, it is ordered this 1st day of June, A. D. 1908, that Howard Siebel, James P. Kane, George Siebel, Vincent Kiernan, Mark Kiernan and Veronica Kiernan, and all others concerned, appear in said court on Monday, the sixth (6th) day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court:

[Seal] **ASHLEY M. GOULD, Justice.** A true copy. Attest: **Wm. C. Taylor, Deputy Register of Wills.** 23-St

**Gordon & Gordon and Erskine Gordon, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Agnes Kayser v. Agnes M. Albrecht et al.**  
**Equity, No. 27,488.**

The trustees having reported to the court that they have sold at public auction to Hanora Keliher part of lots 171 and 169 in square 1254, being 1515 34th street, for \$975; to Annie C. Keliher part of lots 171 and 169 in square 1254, being 1517 34th street, for \$975; to Charles H. Hurley part of lot 40 in square 1221, being 3413 Prospect avenue, for \$2,000, and to Henrietta Emrich subplot 2 in square 1211, being 2909 Olive avenue, for \$2,150, it is, by the court, this 2d day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter

[Seal] and the Evening Star. **ASHLEY M. GOULD, Justice.** A true copy. Test: **J. R. Young, Clerk,** by **Wms. F. Lemon, Asst. Clerk.** 23-St

**P. A. Bowen, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of India Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1908. **PHILANDER A. BOWEN, JR.,** 1418 G st. N. W. Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,198. Administration. [Seal.] 23-St

**J. Wilmer Latimer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Dixon Fullerton, Deceased.**  
**No. 15,217. Administration Docket 38.**

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by Argus L. Fullerton, surviving executor therein named, it is ordered this 1st day of June, A. D. 1908, that Francis Savage Sinclair, Frank Marvin Sinclair, William Arthur Brumback, and all others concerned, appear in said court on Thursday, the 2d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court:

[Seal] said return day. **ASHLEY M. GOULD, Justice.** Attest: **Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 23-St

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**Legal Notices.**

**P. R. Hilliard, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Patrick Reddington,**  
**Deceased. No. 15,087.**

Upon consideration of the petition of Bridget Durken, administratrix c. t. a. of the estate of Patrick Reddington, deceased, filed herein the 9th day of May, 1908, setting forth that the personal property of said decedent is not sufficient to pay the debts due by his estate and praying for the sale of part of original lot 3, in square 450, together with the improvements thereon, known as premises numbered 611 C street northwest, in the city of Washington, District of Columbia, for the purpose of paying the debts due by said decedent's estate, it is, by the court, this 1st day of June, A. D. 1908, ordered that Margaret McGowan, of Cross Molina, Mayo County, Ireland, and John Reddington, of Killala, Mayo County, Ireland, and all others concerned, appear in this court on Tuesday, the 7th day of July, A. D. 1908, and answer the exigencies of said petition. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 23-St

**SECOND INSERTION.**

**James H. Taylor, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary J. Nourse, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 22d day of May, 1908. **JAMES B. NOURSE, Wisconsin ave. N. W.; RICHARD DOUGLAS SIMMS, 3229 K st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,169. Administration. [Seal.] 22-St

**Gordon & Gordon, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Edward Libbey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of May, 1908. **WILLIAM KING, 1161 16th st. N. W.; HENRY DUTTON SUTER, 3028 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,262. Administration. [Seal.] 22-St

**Geo. F. Collins, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Herman L. Livingston, late of the State of Ohio, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1908. **WILLIAM M. PORTER, 494 La. ave. N. W., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,002. Administration. [Seal.] 22-St

**Legal Notices.**

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Boudette, otherwise known as Henry Boudet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1908. **FREDERICK A. FENNING**, Century Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,300. Administration. [Seal.] 22-St

**Joseph J. Darlington, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles B. Church, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of May, 1908. **CHARLES W. CHURCH**, 1012 C st; **S. W.; WILLIAM A. H. CHURCH**, 8th and C sts. S. W.; **MARY A. CHURCH**, 308 11th st. S. W.; **JOSEPH J. DARLINGTON**, 410 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,331. Administration. [Seal.] 22-St

**R. R. Horner, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of William J. Peters,**  
**Deceased. Administration No. 15,125.**

**ORDER OF PUBLICATION.**  
 Application having been made by Julia A. Peters and Julia E. Tibbs for probate of the last will and testament of William J. Peters, deceased, and for letters testamentary thereon, it is, by the court, this 28th day of May, A. D. 1908, ordered, that William F. Tibbs, and all others concerned, appear in said court on or before the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Post and The Washington Law Reporter once each week of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 22-St

[Filed May 28, 1908. J. R. Young, Clerk.]  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**James H. Whitmore et al. v. Anna M. Whitmore**  
**et al. No. 26,758. In Equity.**

Upon consideration of the report of Hayden Johnson and Raymond A. Heskell, trustees appointed by the court in the above entitled cause, reporting the sale to Anna M. Whitmore for the price of \$2,500, of part of original lot 13 in square 438, described as follows, viz: Beginning on 7th street 66 feet and four inches from the northeast corner of said square and running thence south on said 7th street 18 feet 6 inches; thence west 69 feet 4 inches; thence north 18 feet six inches; thence east 69 feet 4 inches to the beginning, excepting therefrom the north 8 and  $\frac{3}{4}$  inches front on 7th street by the depth of 30 feet, it is by the court, this 28th day of May, 1908, ordered that said sale be, and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of June, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter. **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 22-St

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**Legal Notices.**

**Wm. W. Boarman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Rudolph Hasler, Deceased.**  
**No. 15,265. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Hasler, it is ordered this 22d day of May, A. D. 1908, that Alfred A. Hasler or Alfred A. Harper, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-St

**Frank E. Elder, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Robert Henry Payne, Deceased.**  
**No. 15,270. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret Payne, it is ordered, this 26th day of May, A. D. 1908, that the unknown heirs at law and next of kin of Robert Henry Payne and all others concerned, appear in said court on Thursday, the 2d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-St

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Louise Novel, Deceased.**  
**No. 15,264. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Leonide Delarue, and it appearing to the satisfaction of the court that decedent left no known next of kin, it is ordered, this 22d day of May, A. D. 1908, that the unknown next of kin of said decedent, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-St

**Fred'k Eichelberger, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. H. Christian, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 15th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 22d day of May, 1908. **THE WASHINGTON LOAN AND TRUST CO.**, by **Fred'k Eichelberger**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,425. Administration. [Seal.] 22-St

Justice blanks of every description for sale at this office.



**Legal Notices.**

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Christian Xander, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of May, 1908. HENRY XANDER, MINNIE ISEMAN, 909 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,378. Administration. [Seal.] 22-St

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John K. Pfeil, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. CHRISTIANA PFEL, 204 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,292. Administration. [Seal.] 22-St

**G. Percy McGlue, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Ryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. JAMES F. SHEA, 648 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,798. Administration. [Seal.] 22-St

**THIRD INSERTION.**

**Edwin C. Dutton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick Luck, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of May, 1908. EDWIN C. DUTTON, Columbian Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,145. Administration. [Seal.] 21-St

**Heber J. May, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Edward E. Holman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of April, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of April, 1908. EDWARD D. N. WHITNEY, Ouray Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,135. Administration. [Seal.] 21-St

**Legal Notices.**

**Eugene A. Jones, Geo. C. Shinn, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

Thomas R. Harney, Plaintiff; Unknown Heirs, Devisees and Allenees of Buller Cocke; Unknown Heirs, Devisees and Allenees of James Davidson; and Unknown Heirs, Devisees and Allenees of Richard Forrest. In Equity, No. 27,647.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lots numbered twelve (12) and thirteen (13) in square ten hundred and sixty-six (1666) in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 20th day of April, 1908, ordered that the unknown heirs, devisees and allenees of Buller Cocke; unknown heirs, devisees and allenees of James Davidson, and unknown heirs, devisees and allenees of Richard Forrest, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10

**Eugene A. Jones and Geo. C. Shinn, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Frank S. Collins, Plaintiff, v. Unknown Heirs, Devisees, and Allenees of Harritta Cornish, Deceased.**  
**In Equity, No. 27,646.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to the east thirteen feet seven inches (13' 7") front on I street by the full depth thereof of lot lettered "D" in Frederick May's subdivision of part of square seven hundred ninety-seven (797), in the city of Washington, District of Columbia, as per plat of said subdivision recorded in book N. K., page 127, in the office of the surveyor of the District of Columbia. On motion of complainant, by solicitor Eugene A. Jones, it is, this 20th day of April, A. D. 1908, ordered that the unknown heirs, devisees, and allenees of Harritta Cornish, deceased, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10.

**Horace R. George, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret W. Huyett, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 21st day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 21st day of May, 1908. EMMA S. HUYETT, LAURA V. HUYETT, 119 Tenn. ave. n.e. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,211. Admn. [Seal.] 21-St

**T. L. Jeffords, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Laura L. Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of May, 1908. LAURA L. PAUL, 79 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,049. Administration. [Seal.] 21-St



**Legal Notices.**

C. Clinton James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Robert T. Fywell, Deceased.  
No. 15,103. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Martha E. Fywell, it is ordered, this 20th day of May, A. D. 1908, that Denzel Fywell, and all others concerned, appear in said court on Monday, the 22d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY

[Seal] M. GOULD, Justice, Attest: James Tanner,  
Register of Wills for the District of Columbia,  
Clerk of the Probate Court. 21-31

Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jerusha M. Holton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. FREDERICK A. HOLTON, 2125 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,276. Administration. [Seal.] 21-31

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles W. Milbourne, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. EDITH V. CARRUTHERS, 3240 1/2 M st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,232. Administration. [Seal.] 21-31

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Frederick Roeber, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of May, 1908. FREDERICK A. KENNING, Century Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,235. Administration. [Seal.] 21-31

Daniel W. O'Donoghue, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Bernard Mullen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of May, 1908. JULIA MULLEN, 613 8th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,275. Administration. [Seal.] 21-31

**Legal Notices.**

Cull & Cull, Solicitors

In the Supreme Court of the District of Columbia.  
James McLaren, Ruth M. McL. Pardew, Eliza P. Wilson, Complainants, v. Abbie H. Wilson, and the Unknown Heirs, Devisees, and Alienees of Abbie H. Wilson, Defendants.

In Equity Cause 27,718. Doc. 61.

The object of this suit is to establish title by adverse possession in the complainants to lots 577 and 578 in Uniontown, District of Columbia, as per plat in book Levy Court 2, page 83, in the office of the surveyor for said District. On motion of the complainants, and for good cause shown to the court, it is, this 20th day of May, A. D. 1908, ordered by the court, that the defendants herein, to wit, Abbie H. Wilson, and the unknown heirs, devisees, and alienees of Abbie H. Wilson, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post, newspapers published in the city of Washington, District of Columbia. ASHLEY

[Seal] M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 21-31

David Rothschild, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James Lennon, Deceased.  
No. 15,252. Administration Docket.—

Application having been made herein for letters of administration on said estate, by David Rothschild, it is ordered, this 18th day of May, A. D. 1908, that the unknown heirs at law and next of kin of said James Lennon, deceased, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-31

J. A. Maedel, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Catherine Heins, Deceased.  
No. 15,250. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Katie Flammer, it is ordered this 19th day of May, A. D. 1908, that Fayette Hirsch, otherwise known as Frederick Hirsch, and all others concerned, appear in said court on Tuesday, the 23d day of June, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.

[Seal] Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 21-31

E. S. Mussey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Andrew Matsen alias Andreas Madsten, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of May, 1908. ELLEN S. MUSSEY, 613 15th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,167. Administration. [Seal.] 21-31

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JUNE 12, 1908

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### Amendment to Rules of Court of Appeals.

The following amendment to the rules of the Court of Appeals was promulgated June 9, 1908: "It is ordered that section 3 of Rule VIII of this court be, and is hereby, amended by adding thereto the following paragraph:

"(4) Whenever a decision of this court, that has been published in the official reports of the court, shall be cited in a brief, the reference shall include the volume and page of the report wherein the same has been published."

"This rule shall take effect on the first Tuesday in October, 1908, and apply to all cases submitted for hearing thereafter."

### CASES DECIDED BY THE COURT OF APPEALS.

#### Habeas Corpus; Discharge in Extradition Proceedings; Res Adjudicata.

In *Benson v. Palmer*, the appeal was from an order of the court below dismissing a petition for a writ of habeas corpus. The appellant was indicted in this District for conspiracy to defraud the United States out of public lands. In proceedings in New York for his extradition he was arrested on a bench warrant, but on petition for habeas corpus his release was ordered by the United States Circuit Court, which held that the indictment did not charge an offense against the United States. Subsequently appellant came to this city, and was arrested on a bench warrant issued out of the Supreme Court of this District to answer the indictment against him. He again filed a petition for a writ of habeas corpus, claiming that by reason of the decision of the New York court against the validity of the indictment that question was res adjudicata. This contention was denied by the court below, which held that the legal sufficiency of the indictment could

only be determined by the courts of this District, and the petition was dismissed. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, affirms the order appealed from.

#### Police Regulations; Keeping Live Poultry on Premises.

In *District of Columbia v. Keen*, the appeal was from an order of the Police Court of this District quashing an information charging a violation of a police regulation with respect to the keeping of live poultry. The defendant was charged with keeping poultry on his premises, in a square having 75 per cent of the property improved, without having obtained a permit from the health officer as required by the regulation. The Police Court held the regulation invalid, for uncertainty in its terms, and the Court of Appeals affirms the judgment in an opinion by Mr. Chief Justice Clabaugh, of the Supreme Court of this District, who sat with the court in the hearing of the case.

#### Husband and Wife; Suit by Wife for Assault Committed During Coverture.

In *Thompson v. Thompson*, the appeal was from a judgment of the court below, in an action by a wife against her husband to recover damages for an alleged assault committed during coverture. The court below denied the right of the wife to maintain the suit, and the judgment is affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb, which declares that "litigation of this sort is vicious in principle and contrary to sound public policy, and we believe not authorized by the Code."

#### Appeals; Failure to Join Necessary Party.

In *Taylor v. Leesnitzer*, the appeal was dismissed for failure to join a necessary party. The appellant filed a motion to set aside the decree of dismissal and for a hearing on the merits, or else that the decree be modified so as to permit appellant to correct the record by citing the omitted parties or giving an additional bond. The Court of Appeals denies the motion, in an opinion by Mr. Chief Justice Shepard.

#### Unlawful Fishing in Waters of Potomac River.

In *Evans v. United States*, it was sought to review a judgment of the Police Court convicting the plaintiff in error upon an information charging him with unlawfully fishing with a dip-net in the Potomac River, in violation of section 896 of the Code. Plaintiff in error is a citizen of Virginia, and claimed the right, as such, to fish in the waters of the Potomac River. At the time the offense charged was committed he was standing on the Virginia shore. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel (Mr. Chief Justice Shepard dissenting), holds that citizens of Virginia have no vested rights to fish in the waters of the Potomac River in this District that are not subject to its police regulations, and affirms the judgment.

#### Patent Appeals Decided.

Per Mr. Chief Justice Shepard: *Mead v. Davis*, reversed; In re application of *George H. White*, affirmed.

Per Mr. Justice Robb: *Moore v. Hewitt*, affirmed; *Kinsman v. Strohm*, affirmed; *McKillop v. Fetzner*, affirmed; *Davis v. Horton*, affirmed.

Per Mr. Justice Van Orsdel: *Stinemetz v. Thomas*, affirmed.

## Court of Appeals of the District of Columbia.

CHRISTIANA HYDE, ADMINISTRATRIX,  
APPELLANT,

v.

THE SOUTHERN RAILWAY COMPANY.

### EMPLOYERS' LIABILITY ACT HELD VALID; DAMAGES RECOVERABLE.

1. The act of Congress of June 11, 1906, commonly known as the Employers' Liability Act, is, as applied to the District of Columbia constitutional and valid, notwithstanding it has been held by the Supreme Court of the United States to be repugnant to the Constitution in so far as it extends to injuries received, in a State, by employees of a railway company engaged in interstate commerce.
2. The said act creates a new cause of action for the benefit of employees of a common carrier engaged in trade or commerce in this District, and in case of the death of such employee for the benefit of the persons therein named; and the amount of recovery under said act is not subject to the operation of section 1301, Code D. C., which limits all recoveries of damages for injuries resulting in death from the wrongful act, neglect or default of any person or corporation to \$10,000.

No. 1890. Decided June 2, 1908.

APPEAL (specially allowed) from an order of the Supreme Court of the District of Columbia, at Law No. 49,726, sustaining a demurrer to the declaration in an action under the act of June 11, 1906, to recover damages for injuries causing death. Reversed.

Mr. H. H. GLASSIE for the appellant.

Messrs. HAMILTON, COLBERT, YERKES & HAMILTON for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

1. The question involved in this appeal is the constitutionality of the act of Congress, approved June 11, 1906, commonly known as the Employers' Liability Act, as applied to the District of Columbia. It comes before us on a special appeal granted from an order of the court below, sustaining a demurrer to the first four counts of a declaration filed by Christiana Hyde, as administratrix of the estate of Richard Hyde, deceased, against the Southern Railway Company, to recover damages, laid at \$20,000 in each count, for the death of intestate as the result of an act of negligence of the defendant.

In the event that the act be sustained, another question arises on the amount of damages laid in the several counts of the declaration, which is, whether the amount of recovery under said act is subject to the control of section 1301, District of Columbia Code, which limits all recoveries of damages for injuries, resulting in death, from wrongful act, neglect or default of any person or corporation, to \$10,000.

2. The primary question is as to the validity of the said act, entitled "An Act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees." Section 1, which is the only one necessary to be recited, reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Con-

gress assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works."

The Supreme Court of the United States has recently held this act to be repugnant to the Constitution in so far as it extends to injuries received, in a State, by employees of a railway company engaged in interstate commerce. *Employers' Liability Cases*, 207 U. S., 463. In the opinion of the court it was said by Mr. Justice White: "The act, then, being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power to regulate commerce. . . . So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the States, etc., therefore, the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employee' as found in the statute should be held to mean any employee when such employee is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. But if we could bring ourselves to modify the statute by writing in the words suggested, the result would be to restrict the operation of the act as to the District of Columbia and the Territories. We say this because immediately preceding the provision of the act concerning carriers engaged in commerce between the States and Territories is a clause making it applicable to 'every common carrier engaged in trade or commerce in the District of Columbia or in any Territory of the United States.' It follows therefore that common carriers in such Territories, even though not engaged in interstate commerce, are by the act made liable to 'any' of their employees, as therein defined. The legislative power of Congress over the District of Columbia and the Territories being plenary and not depending upon the interstate commerce clause, it results that the provision as to the District of Columbia and the Territories, if standing alone, would not be questioned. Thus, it would come to pass, if we could bring ourselves to modify the statute by writing in the words suggested; that is, by causing the act to read 'any employee when engaged in interstate commerce,' we would restrict the act as to the District of Columbia and the Territories, and thus destroy it in an important particular. To write into the act the qualifying words, therefore, would be but adding to its provisions in

order to save it in one respect, and thereby to destroy it in another; that is, to destroy in order to save and to save in order to destroy. The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save, the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. *Ill. C. R. R. v. McKendree*, 203 U. S., 514, and authorities there cited."

Necessarily all that was actually decided in that case was, that, in so far as the act relates to carriers engaged in business in the States, it is repugnant to the Constitution in that it applies to all employees whether engaged or not in interstate commerce at the time of injury; and that it can not be restricted by construction to employees engaged in interstate commerce alone in order to save its constitutionality. We have inserted the lengthy extract from the opinion in that case not only to show the grounds on which the decision rests, but also because some of the language quoted is relied on by both parties in this case in support of their respective contentions. As said therein, the power of Congress in the District of Columbia is plenary and extends to the regulation of all commerce of whatsoever nature that may be carried on within its boundaries; and the act expressly applies to all employees of common carriers in said District without regard to the character of the commerce engaged in. If, therefore, the operation of the act had been confined by its terms to the District of Columbia and the Territories, there could be no doubt of its constitutionality. This power can not be exercised in a State, but is restricted to the regulation of commerce among the several States.

Congress having undertaken to exercise plenary power in the one act, as it has been interpreted, not only in the District of Columbia and the Territories, where it has been conferred, but also in the States, where it has not, the question for our determination is whether the provisions of the same, as they relate to the respective jurisdictions, are separable and not dependent upon each other, so that one may stand notwithstanding the invalidity of the other. The rule in this regard is well settled as we have seen; the difficulty lies in its application.

This condition of severableness of the provisions of a statute, that may preserve the validity of one notwithstanding the repugnance of the other to the Constitution, is not dependent upon the fact that they may be found in separate

sections, though this would ordinarily render the task of separation easier. It is sufficient if the separation can be accomplished by excising a clause of the same section, and leaving the remainder complete and unchanged in meaning without reading into it another word. *Penniman's case*, 103 U. S., 714, 717; *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S., 611, 617; *R. R. Co. v. Schutte*, 103 U. S., 118, 142.

We think it is evident from the language of the title and the first clauses of section 1 of the act that, in its enactment, Congress contemplated the exercise of its plenary power in the District of Columbia and the Territories, and of only its limited power in the States. This general intention, as regards the latter, was thwarted by the use of language, appropriate to the exercise of its plenary power, but not to the exercise of its limited power, making the common carrier, who might also be engaged in interstate commerce, liable to "any of its employees," without discrimination in respect of the character of the business in the conduct of which the injury might occur. We do not think, however, that the purpose to make the new rule of law, defining the relations of master and servant, apply to "every common carrier engaged in trade or commerce in the District of Columbia or in any Territory of the United States," is made abortive by the next clause making it apply also to common carriers engaged in commerce among the several States. This second clause or provision can be eliminated without impairing the particular effect or changing the meaning of the first in any particular. Striking out the second clause, the section would read as follows: "That any common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, . . . shall be liable to any of its employees, or, in case of his death, to his personal representatives for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works." As thus read the section is perfect and complete without the addition of a new word, or the slightest change in the meaning of one that has been used. The situation is quite different from that presented in the case of *U. S. v. Reese*, 92 U. S., 214, 221, where it was said that the proposed effect was sought to be maintained, not by striking out or disregarding words that are in the section, but by inserting words not now there. The same difference exists between the conditions of this case, and those of the case chiefly relied on by the appellees. *I. C. R. R. v. McKendree*, 203 U. S., 514, 529.

3. The provisions of the section being deemed severable, the next question is, whether it is plain that Congress would have enacted the act with the unconstitutional provision eliminated? We see no reason to doubt that it would have done so. One of the special duties of Congress is to legislate generally for the benefit of the inhabitants of the District of Columbia and the Territories. That duty in respect of the adequate protection of the employees of common carriers engaged in trade or commerce therein, is in no wise dependent upon its performance in respect of the limited

class of employees subject to its jurisdiction in the several States. The latter may be, and are in great measure, protected by State legislation. They have another power to appeal to for their relief, while those in the District of Columbia have not. No apparent reason appears why Congress would not have extended this relief to them, unless coupled with the relief which it sought ineffectively to extend to others. Lifting the burden of the rule of the common law from all employees of carriers in the District and Territories, adds nothing to that borne by the second class of employees in the several States that have not yet undertaken their relief. That the performance of its duty to all employees of carriers in the District of Columbia, and the Territories, exclusively within its power, was first in mind is indicated by the fact that they are first mentioned in the act, with comprehension of all such employees in whatever character of trade or commerce their employers may be engaged.

4. The amount of damages to be recovered in cases arising under the act is not limited in amount, and those alleged in the fourth count of the declaration, to which the demurrer was sustained, amount to \$20,000. It remains, therefore, to consider whether the amount of the recovery is limited by the operation of section 1301, Code D. C. That section confers the right of action for all injuries done or happening within the limits of the District of Columbia, resulting in death, when caused by the wrongful act, neglect, or default of any person or corporation, when if death had not ensued the party injured would have been entitled to an action. "Such damages shall be assessed with reference to the injury resulting from such act, neglect, or default causing such death, to the widow and next of kin of such deceased person: Provided, That in no case shall the recovery under this act exceed the sum of ten thousand dollars." Section 1302 requires the action to be brought by and in the name of the personal representative of such deceased person, and within one year after the death of the party injured. Section 1303, provides that the damages recovered shall not be appropriated to the payment of the debts of the deceased, but shall inure to the benefit of his or her family, and shall be distributed according to the provisions of the statute of distribution. The Employers' Liability Act creates a new cause of action for the benefit of employees of a common carrier engaged in trade or commerce in the District of Columbia and the Territories, and, in case of their death, for the benefit, first, of widows and children, if any, second, of parents, and if none, lastly, of next of kin dependent upon the deceased; and makes the employer liable for "all damages which may result from the negligence of any of its officers, agents, or employees," etc. Section 2 provides that contributory negligence shall not bar a recovery where the same was slight and the negligence of the employer was gross in comparison, "but the damages shall be reduced by the jury in proportion to the amount of negligence attributable to such employee." Section 3 provides that no contract of employment, insurance, relief, benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or

defense to an action brought to recover damages for personal injuries to, or death of such employee: Provided, however, That upon the trial of such action the defendant may set off any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or in case of his death, to his personal representative. Section 4 limits the right of action to one year.

We do not think the question raised on the operativeness of these two statutes is whether the elder is repealed by the later, which it certainly is not, but whether the later is to be governed by the terms of the elder in respect of the limitation of the amount of damages that may be recovered.

The objects of the two are different. The first remedies a defect in the common law by conferring a right of action in all cases of injuries resulting in death, when, had the injured party survived, he would be entitled to an action, and in no other. The second changes the common law in relation to master and servant by giving the latter a right of action for all damages for injuries occasioned by the negligent acts of fellow-servants, and modifies the law as to the contributory negligence of the injured person. It then extends this right of action, in case of death, to the personal representative of the deceased. The damages so recovered are distributed in a different manner from that provided in the earlier law, and are not expressly discharged of the debts or liabilities of the deceased as therein provided. The third section relates to employment contracts, insurance, relief benefits, etc., not mentioned in the Code, and provides a measure of set-off growing out of the same. Moreover, the act operates alike in the several Territories, where it does not appear that there is any statute limiting the amount of recovery.

Notwithstanding the invidious distinction made between the beneficiaries of the separate statutes in respect of the amount of the recovery, we see no reason why they may not stand together and operate according to their terms in cases coming under them respectively. In conferring a right of action where none existed at common law, Congress can couple the grant with any condition it may deem reasonable in the particular case, and is not bound to affix the same condition to all similar grants. Instead of intending to bring the parties to actions created by the act, under the operation of section 1301 of the Code, we think that the intention was to give it operation according to its terms. It makes complete provision for all of its purposes, and leaves nothing to be supplied by the provisions of the Code. Each is to be construed, therefore, as applying to cases arising under it, and to none other.

For the reasons given we think it was error to sustain the demurrer, and the order will, therefore, be reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion. Reversed.

Musical Compositions.—The United States Supreme Court decided in *White-Smith Publishing Co. v. Apollo Co.*, 28 Supreme Court Reporter, 319, that, although the manufacture and sale of perforated rolls, to be used in connection with mechanical piano players, enables a use of musical compositions for which no value is paid, the copyright is not thereby infringed.

## Court of Appeals of the District of Columbia.

CHARLES T. RUSSELL, APPELLANT,

v.

THE WASHINGTON POST COMPANY, A  
CORPORATION.

## LIBEL; DAMAGES; PUNITIVE DAMAGES; PRIVILEGE.

1. The allegations in a declaration for an alleged libel wherein the plaintiff, a minister of the Gospel as well as writer and author of books, etc., was charged with scandalous and grossly improper conduct with his lady parishioners, etc., considered and evidence as to the extent of plaintiff's writings and their circulation and the size of his congregation held competent as bearing upon the question of damages, and its exclusion reversible error.
2. Punitive damages may be allowed where publication of a libel was prompted by actual malice, or where the defendant acted with recklessness or careless indifference to the rights and feelings of the party libeled.
3. The evidence in the present case considered, and the refusal of the trial court to submit to the jury the question of plaintiff's right to exemplary damages held error.
4. The publication in the present case held libelous per se, and the defense of privilege to be inapplicable thereto.

No. 1781. Decided May 5, 1906.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,550, entered upon a verdict in an action for libel. Reversed.

Mr. ANDREW WILSON and Mr. N. W. BARKSDALE for the appellant.

Mr. CHAPIN BROWN, Mr. C. A. DOUGLAS and Mr. J. P. EARNEST for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

Plaintiff seeks in this action to recover for an alleged libel by defendant in publishing in its editorial column remarks, which, in substance, stated that plaintiff was guilty of scandalous and grossly improper conduct with his lady parishioners, and particularly with one Rose Ball. Defendant pleaded general issue, and the jury returned a verdict for plaintiff in the sum of \$1.

Plaintiff prosecutes this appeal because of alleged error in the admission or exclusion of evidence, and in making or refusing certain charges to the jury.

1. Exclusion of evidence offered by plaintiff as to the size of his congregation, the circulation of his journal, and the number and circulation of his books.

In his declaration plaintiff alleged, among other things, that he "was in good standing and repute in the ministry of the gospel in which calling or profession, and in the business of writing, editing, and publishing religious papers, pamphlets, and books having large circulation and sale in the United States and foreign countries, and from which sales an income was and is derived, with certain divers emoluments and gains. . . . Yet the defendant, well knowing the premises, but contriving to deprive the plaintiff of his good name, reputation and professional and business standing, and to bring him into scandal and disrepute among his friends, neighbors, associates, acquaintances, *patrons, customers* and with the public, and to injure him in his said

calling, profession, occupation, business and pursuits," published the article complained of. "By reason of said publication the plaintiff has been greatly hurt and injured in his good name, fame and reputation, and has been brought into disgrace and disrepute among divers neighbors, friends, associates, acquaintances, *patrons, customers*, and among divers other persons, and before the public generally, and has been greatly injured in his said calling, profession and business as a minister of the Gospel, in writing, editing and publishing religious papers, pamphlets and books," etc. To support these allegations, plaintiff offered to show the size of his congregation, the circulation of a monthly journal of which plaintiff was editor, what books plaintiff was author of and their circulation, and that he has been deprived of certain emoluments received from a sale of these books. Plaintiff was allowed to show that the journal has "a wide circulation all over the world," and that he was "the author of several books," but the learned court sustained objections to the offers of other evidence upon these points, upon the ground that plaintiff's counsel had gone into them as far as he had the right to go. We think this was error.

Under the allegations in the declaration plaintiff was entitled to go into the question of damages to him as a minister, writer and author; *Moore v. Francis*, 121 N. Y., 199; *Chiatovich v. Hanchett*, 88 Fed., 873. There is nothing to the contrary in *Smedley v. Soule*, 125 Mich., 192, or in the other cases cited by the defendant, for the pleadings there were quite different from the declaration in this case. In order to show these damages, the extent of plaintiff's writings and their circulation, and the size of his congregation, were relevant and proper evidence. *Turner v. Hearst*, 115 Calif., 394; *Mallory v. Pioneer Co.*, 34 Minn., 521; *Klumph v. Dunn*, 66 Pa. St., 141. The evidence admitted upon these points was very indefinite and insufficient as a basis for award of damages. We think plaintiff was deprived of a substantial right by the exclusion of the evidence offered.

2. The trial court held that the evidence was insufficient to entitle plaintiff to have the question of exemplary damages submitted to the jury. We think there was error in this. The managing editor of defendant testified that the editorial was based upon information contained in a news item published in defendant's paper and a number of New York and Pittsburg papers; that contrary to the statement in the editorial reports of the divorce suit reached defendant regularly; that he took no steps to acquire a straight story and important details; that he had seen before publishing the editorial an article in the Pittsburg Gazette containing headlines "Russell denies wife's charges," the opening paragraph of which was "Pastor C. T. Russell, of the Eible House, Allegany, denied all his wife's charges in her suit for divorce;" that at the time of publishing editorial he knew plaintiff had testified in a general denial of the charges; and that he could have informed himself before the article in the paper. Punitive damages may be allowed where publication of a libel was prompted by actual malice, or where the defendant acted with recklessness or careless indifference to the rights and feelings of the party libeled. While in the circumstances of this case the submission of this question to the jury might not have made

any difference in its verdict, we nevertheless are of the opinion that the character of the published article and the evidence relating to its publication entitle the plaintiff to have the jury consider the question. *Morning Journal v. Rutherford*, 51 Fed., 513; *Cooper v. Printing & Pub. Assoc.*, 57 Fed., 566; *Times Pub. Co. et al. v. Carlisle*, 94 Fed., 762; *Ganbrill v. Schooley*, 93 Md., 64; *Shockey v. McCauley*, 101 Md., 461; *Benton v. State*, 59 N. J. L., 55; *Morrison v. Press Pub. Co.*, 59 N. Y. Sup. Ct., 216; *Clark v. Nor. Amer. Co.*, 203 Pa. St., 346.

3. The remaining assigned errors that we need notice relate to the defense which, as stated by counsel for appellee, was that "the words, the editorial article, were privileged by reason of the said words (editorial article) being fair and bona fide comment." If we had not already found reversible error we should not think it proper to consider these alleged errors, as we think counsel for appellant waived any right to challenge the rulings by making certain concessions in respect to such defense during the preparation of the court's charge to the jury. But, as the question raised by these assignments of error are certain to arise upon retrial of the case, we feel that we should not send the case back without further notice of them.

We think the defense of privilege is not applicable to the article published by the defendant. The article is unquestionably libelous per se. *Washington Times Co. v. Downey*, 26 App. D. C., 263; 33 Wash. Law Rep., 770. Without stating the sources of its information, defendant, upon its own responsibility, makes a positive statement in this article that plaintiff is guilty of scandalous and grossly improper conduct, which, if true, would justly bring upon him the contempt and ridicule of society and utterly discredit and destroy him in his ministerial work. The article attacks the private life and private character of plaintiff; it is not confined to comment and criticism on his acts as a public man or his public life; but, so far as this record discloses, falsely asserts that he has committed certain acts of an immoral nature in his private life. The rule is well established by high authority that "charges imputing a criminal offense or moral delinquency to a public officer can not, if false, be privileged, though made in good faith, and this though the charge relates to an act of the officer in discharge of his official duties," and that "while any citizen has the right to publish to the general public a fair comment and criticism on matters of public concern, he will not, as a general rule, be protected if he goes further and publishes false statements of a defamatory character." 18 A. & E. Enc., 1041, and cases there cited.

We will refer to a few of the cases bearing upon this point.

*Hamilton v. Eno*, 81 N. Y., 116, was an action for libel in publishing a statement accusing a public officer of accepting money from an interested party for making a statement which would influence a municipality to purchase that party's products. The defense of privilege was interposed. The court was unanimous in holding that the defense of privilege did not apply, and said in part: "One may in good faith publish the truth concerning a public officer, but if he states that which is false and aspersive, he is liable therefor, however good his motives. A person in public

office is no less to be protected than one who is a candidate for public office; and the law of libel must be the same in each case. . . . Yet it is the law of this State that to accuse a candidate for public office of an offense is not privileged, though the charge was made without evil motive, and in the exercise of political right. . . . We are of the opinion that the official act of a public functionary may be freely criticised, and entire freedom of expression used in argument, sarcasm and ridicule upon the act itself; and that then the occasion will excuse everything but actual malice and evil purpose in the critic. We are of the opinion that the occasion will not of itself excuse an aspersive attack upon the character and motives of the officer, and that to be excused the critic must show the truth of what he has uttered of that kind."

*Fitzpatrick v. Publishing Co.*, 48 La. Ann., 1116. This was an action to recover damages for publishing an article falsely accusing plaintiff of corruption in his relation to the municipal government. The facts there were not unlike those in the case at bar. The communication was held not to be privileged. The court said: "Having been at the pains to closely scrutinize all the authorities and text writers, both ancient and modern, we find them consistent and uniform to the effect that the publication of statements selected from other journals that are injurious to the reputation or character of private individuals or public officials; or editorial articles falsely commenting thereon, if false in fact, are libelous and defamatory, and are presumed to be malicious, and, therefore, actionable. The authorities, English as well as American, have generally held that the publisher and editor of a newspaper to the same responsibility with any other person who makes injurious communications. Malice on his part is constructively inferred, if the communications are false, in fact. It is no defense that they have been copied with or without comment from another paper; or that the source of information is stated at the time, and the information is believed to be true."

In *Benton v. State*, 59 N. J. L., 551, defendants were convicted of criminal libel in publishing an article falsely charging a police officer with extortion in purposely swelling the amount of a prisoner's fine, collecting it out of prisoner's family to procure his discharge and pocketing the difference. Defendants contended the communication was privileged, and that it was, therefore, necessary for the prosecution to show actual malice. This defense, it was held, could not be made to the article complained of.

In *Clifton v. Lange*, 108 Iowa, 472, a newspaper article accusing a justice of the peace in the performance of his duties of a "dishonorable act," of "dishonest prejudice," and of helping "in the rotten and infernal steal," etc., was under consideration. Demurrer to a defense that the publication was privileged was sustained, the court saying: "The publication admitted to have been made is not privileged, for the reason that it contains an attack upon the private character of the plaintiff."

In considering a publication by a newspaper of an article intimating that plaintiff was guilty of murder, Justice Holmes said: "And it equally is settled that the privilege of comment and criticism on matters of public interest, which a possible



murder may be assumed to be for the purpose of decision, does not extend to false statements." *Haynes v. Printing Co.*, 169 Mass., 512.

The same justice wrote the opinion in *Burt v. Advertiser Newspaper Co.*, 154 Mass., 238, where a newspaper was sued for publishing an article charging plaintiff with being a party to alleged frauds in the New York Custom House. He there said: "We agree with the defendant, that the subject-matter was of public interest, and that in connection with the administration of the custom house the defendant would have a right to make fair comments on the conduct of private persons affecting that administration in the way alleged. But there is an important distinction to be noticed between the so-called privilege of fair criticism upon matters of public interest, and the privilege in the existing case, for instance, of answers to inquiries about the character of a servant. In the latter case, a bona fide statement not in excess of the occasion is privileged, although it turns out to be false. In the former, what is privileged, if that is the proper term, is criticism, not statement, and however it might be if a person merely quoted or referred to a statement as made by others, and gave it no new sanction, if he takes upon himself in his own person to allege facts otherwise libelous, he will not be privileged if those facts are untrue."

The following quotation from *Davis v. Shephard*, 11 App. Cas., 187 (English), is then made with approval: "It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct. In the present case the appellants, in the passages which were complained of as libelous, charged the respondent, as now appears without foundation, with having been guilty of specific acts of misconduct and then proceeded on the assumption that the charges were true, to comment upon his proceedings in language in the highest degree offensive and injurious; not only so, but they themselves vouched for the statements by asserting that though some doubt had been thrown upon the truth of the story, the closest investigation would prove it to be correct. In their Lordships' opinion there is no warrant for the doctrine that defamatory matter thus published is regarded by the law as the subject of any privilege."

Without discussing further the principles established by these authorities, we think it clear that the article here complained of is not privileged, and that there is, therefore, no question of privilege to be submitted to the jury.

The judgment is reversed, with costs, and the case remanded with directions to grant a new trial.

Reversed.

**Mental Distress Caused by Injury to Pet Animal.**—Plaintiff, in the case of *Buchanan v. Stout*, decided by the Appellate Division of the New York Supreme Court, 108 New York Supplement, 38, recovered judgment on a trial in the municipal court for injuries resulting from shock and distress of mind caused by seeing a pet cat mangled by defendant's dog. Plaintiff herself was secure in her room, and suffered no physical injury whatever. The Supreme Court reversed the decision of the municipal court, and held that no cause of action was shown.

## Court of Appeals of the District of Columbia.

ANGELO SCHNEIDER, APPELLANT,

v.

AMERICAN BRIDGE COMPANY OF NEW YORK.

AMENDMENTS; MASTER AND SERVANT; DEFECTIVE APPLIANCES; NEGLIGENCE.

1. The grant or refusal of leave to amend is within the discretion of the trial court; and no abuse of such discretion is shown where it appears that although the case had been at issue for some months no application for leave to amend was made until the case was called for trial, and the defendant was not prejudiced by its refusal.
2. In an action for personal injuries, where it appeared the plaintiff, an iron worker, employed by defendant in the construction of a building, had stepped on a board laid across the beams or joists of the building and was injured by reason of the board breaking, throwing him to the ground, but there was no evidence that the board had been placed across the beams by the defendant's orders or for the purpose of enabling the workmen to walk across the iron framework of the building, it was held that the evidence was insufficient to show actionable negligence committed by defendant, and the trial court properly directed a verdict for defendant.
3. To hold a master responsible a servant must show that the appliances and instrumentalities furnished were defective; and a defect can not be inferred from the mere fact of injury. There must be some substantive proof of negligence; knowledge of the defect or some omission of duty in regard to it must be shown.
4. The application to the facts of this case of the statute of New York of 1897, making a master liable for injuries to a servant occasioned by a defect in scaffolding erected for the performance of plaintiffs' labor, or in any hoist, etc., used therein, denied.

No. 1861. Decided May 19, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,119, entered upon a verdict directed by the court in an action for personal injuries. Affirmed.

Messrs. EVANS, BENSON & POULTNEY for the appellant.

Mr. R. S. HUIDEKOPER for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action to recover damages for personal injuries sustained by the plaintiff while in the employment of the defendant (a corporation of the State of New York) in the construction of a building in the city of Schenectady, in the State of New York. The declaration is in two counts alleging the employment of plaintiff and setting him at work in the construction of the building, as an iron worker; that on October 18, 1906, while so employed, about forty feet from the ground, he had occasion to step down from an iron girder on to a wooden plank, furnished by the defendant for the use of its employees for scaffolds, platforms, footways, and like purposes, and placed across the beams and floor joists of the building for use of plaintiff and others in their work; that the said board broke beneath the weight of plaintiff and caused him to fall to the ground and sustain serious injuries.

The declaration was filed January 28, 1907, and service had on a representative of the defendant corporation, then doing business in the District of Columbia, which filed the plea of the general issue February 5, 1907.

The case was called for trial on October 28, 1907. After the jury had been selected and sworn the plaintiff asked leave to amend his declaration by inserting in the first count the words "upon the statutes of New York in such case made and

provided," and by adding the following paragraph to the second count: "And the defendant has had due notice of the time, place, and cause of aforesaid injury served as provided by chapter 600 of the law of 1900 of the State of New York." The court refused the leave to amend on the ground that it came too late under all the circumstances of the case.

Plaintiff testified that he was employed by defendant in September, 1906, as a riveter on structural iron work in certain buildings it was erecting for the General Electrical Company in Schenectady, New York. Said buildings were about 800 feet long. Plaintiff, on October 18, 1906, was working at the end of the building, the last part that was being constructed. The iron work was started and no brick had been laid. The only iron work then doing was in that part of the building. He was on a riveting job, thirty or thirty-five feet above the ground. Two other men were working with him on the scaffold and another, called a heater, was further away on a scaffold by himself. The "heater" threw rivets to the "passer," who would stick one in the hole, and plaintiff would "buck it up." He was using a "spring dolly" before dinner, which is used where you can not use a "club dolly." After dinner he came back to work and picked up the "spring dolly" from the scaffold from which he stepped up about eighteen inches on to a girder. He laid the "spring dolly" down there and picked up a "club dolly." In picking it up, instead of turning round on the girder, he stepped down on a twelve inch board which was across two beams. The board broke and he fell through to the ground. The girder was about eight inches wide. He stepped on the board instead of the girder because it had a rough surface and one is less liable to slip than on the iron girder. The big girder was on the outside, and the men were working along it, the scaffold being on the inside and swung on the iron rafters running into the big girder. He undertook to turn on the board instead of the girder because he thought it much safer. Had not handled the board. There were others scattered along there across the beams. "When you walk in these buildings you see boards; and the company generally furnishes boards there. Nobody else furnishes them and you naturally walk on them." Iron workers walk on boards preferably to iron. Did not know how the board came to be there. The defendant furnished lumber. Knew this, because when he came the "boss of the riveting gang" showed him where the lumber was. He also testified as to the severe nature of his injuries, etc., and read a letter which he had addressed to the defendant on November 15, 1906, stating his injuries and present condition.

On cross-examination, he testified that he had been at work for defendant three or four weeks. There were three of them on the one scaffold, and the "heater" with his forge on another. The "gang" tied up the boards composing the scaffold with lumber furnished them. The "boss," Kelly, showed witness the lumber to put up the stagings with, and furnished a new rope in place of an old one. The plank on which he stepped was not fastened to anything. There were other planks around there. Never saw the plank afterwards. He knew that it broke, and did not slip. The board was not in the scaffold, which plaintiff had helped tie up, and had been working on. It was across two beams, and he had not been working

on it. The scaffold had to be shifted two or three times a day, and the gang carried the boards. Plaintiff did not carry a board to stand on when "bucking up" rivets, but stood on the scaffold with the rest. It was not customary for the riveting gang to put boards across the top of beams to walk on.

One other witness testified for the plaintiff. He was heating rivets. Witness was working one story above plaintiff. He did not see the accident. Heard some one call, "pick that man up." Looked and saw plaintiff lying beneath him. He saw a piece of board lying there that had been freshly broken.

When plaintiff closed, the court, on motion of defendant, directed the jury to return a verdict for it; and from the judgment entered thereon plaintiff has appealed.

1. The first error assigned is on the refusal of the court to grant leave to amend the declaration. The avowed object of the proposed amendments was to bring the case under the operation of the statutes of the State of New York relating to the liability of employers to employees. The first of these is the act of 1897, chapter 415, the eighteenth section of which declares that a person employing another in erecting a house shall not furnish, or erect or cause to be erected for the performance of such labor, scaffolding, hoists, stays, ladders, or other mechanical appliances which are unsafe, unsuitable, improper, and which are not so constructed and operated as to give proper protection to the life and limb of the person so employed. The second is the act of July 1, 1902, chapter 600. This provides that if personal injury is caused to an employee, by reason of any defect in the construction of the ways, works, or machinery connected with or used in the employee's business which arose from, or had not been discovered or remedied owing to the negligence of the employer, or any person in his service and entrusted by him with the duty of seeing that the same were in proper condition; or by reason of the negligence of any person in the service of the employer entrusted with or exercising superintendence, or of any person acting as such superintendent with the authority or consent of the employer, the employee injured thereby, or his representatives in case of death, shall have the same right of compensation and remedies against the employer as if the employee had not been an employee, or not in the service of the employer, or engaged in the work. Section 2 provides that no action shall be maintained under this act, unless notice of the time, place and cause of injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the accident causing injury or death.

The grant or refusal of leave to amend is a matter within the discretion of the trial court. *Schrat v. Schoenfeld*, 23 App. D. C., 421, 426: 32 Wash. Law Rep., 230; *Chunn City, etc., Ry. Co.*, 23 App. D. C., 551, 562: 32 Wash. Law Rep., 344. We perceive no abuse of that discretion in this instance. The case had been at issue since February 25, 1907, and no reason appeared why the plaintiff waited until the trial had begun to ask for leave to amend in respect of a matter which was presumably within his knowledge when the action was begun. Moreover, as far as the operation of the first statute extends, there was no reason why he should amend in order to avail himself of it. That

it was considered is shown by the charge of the court as it appears in the record. The defendant sustained no injury through the refusal of the amendment setting up the later statute. Its benefit is limited not only to those who give the required notice, but those also who commence their actions within one year from the date of the injury. That time had elapsed before leave to amend was asked.

2. The question raised on the exception taken on the action of the court in directing a verdict for the defendant, can not be determined on the application of the New York statute of 1897, before mentioned. The court rightly held that it could not apply, because there was no evidence whatever tending to show that the injury was occasioned by any defect in the scaffolding erected for the performance of plaintiff's labor, or in any hoist, stay, ladder or other mechanical contrivance used therein.

3. Tested by the principles of the common law, the evidence was insufficient to show actionable negligence committed by the defendant. An immense building was in course of construction. Plaintiff's special work was at the extreme end of the same, riveting connections with the outer girder. His place of work was upon a scaffold where he appears to have been reasonably safe under the ordinary conditions of his particular labor. It does not appear from the evidence that he or his immediate co-laborers were required or expected to walk over the iron framework in order to reach the scaffold provided for them, or to procure tools for the performance of their labor, or that the defendant undertook to lay boards across the beams for the purpose of enabling any of its employees to walk about over the iron frame work. How the board came to be lying on the beams, or by whom, or for what purpose it was laid there does not appear. For aught that appears, the boards mentioned in the evidence may have been brought and laid by some of the workmen engaged in the building, for their own convenience and of their own motion; or may have been surplus boards left over from the scaffold construction. "The obligation of a master to provide reasonably safe places and structures for his servants to work upon does not impose upon him the duty, as towards them, of keeping a building, which they are employed in erecting, in a safe condition at every moment of their work, so far as its safety depends upon the due performance of that work by them and their fellows." *Armour v. Hahn*, 111 U. S., 313, 318.

Again there was no evidence to show that the board, if laid across the beam, by the master's authority, for workmen to stand or walk upon at their convenience, was in such a defective condition as that the master ought to be charged with negligence in not observing it. *Looney v. Met. R. R. Co.*, 200 U. S., 480, 486. It was said in that case: "To hold a master responsible, a servant must show that the appliances and instrumentalities furnished were defective. A defect can not be inferred from the mere fact of injury. There must be some substantive proof of the negligence. Knowledge of the defect or some omission of duty in regard to it must be shown."

There being no evidence on which a verdict for plaintiff could rest, the court was right in directing the jury to find for the defendant. The judgment must, therefore, be affirmed with costs.

■ Affirmed.

#### The Opinion Rule.

[New York Law Journal.]

In *Commissioners of Anne Arundel County v. State*, in the Court of Appeals of Maryland (68 Atl., 602), it was held that where, in an action against a county for the death of decedent through driving off an open drawbridge, it was claimed that defendant was negligent in allowing the draw to remain without any barriers while open, testimony of a witness as to what in his judgment was necessary to safeguard the bridge at night when the draw was open was inadmissible, the witness not being shown to possess any special knowledge or skill qualifying him to instruct the jury.

The Maryland court thus administers the prevailing opinion rule, and the policy of such decision would doubtless be condemned by Professor Wigmore, who contends that the law should be changed by abrogating that rule. Under such changed condition an ordinary witness in a case like the present one would be permitted to give his opinions, and would be elaborately cross-examined as to the reasons therefor, and all the witnesses for the plaintiff and defendant in turn would express their opinions and be similarly cross-examined. So, also, ordinary witnesses would be allowed to say whether in their judgment a plaintiff, or a decedent, acted with reasonable prudence in view of all the circumstances, and cross-examination as to grounds of inferences would be had. In the average negligence case there would be no lack of witnesses with decided opinions on both sides. It seems very clear that the effect of abrogating the opinion rule would be to confuse and embarrass the jury. It is difficult enough now in a case of any complexity to keep the issues sufficiently plain for the jury to make an intelligent determination, and this difficulty would be greatly increased by loss of the principal element of definiteness—that is, that witnesses shall confine themselves to statements of positive fact. The drawing of inferences may well continue to be left to counsel in commenting upon the evidence and to jurors themselves in reaching their verdict.

**Discharge of Servant Because of Membership in Labor Organization.**—The United States Supreme Court, in *Adair v. United States*, 28 Supreme Court Reporter, 277, held the act of Congress forbidding employers to threaten employees with loss of employment, or to unjustly discriminate against any employee because of his membership in a labor organization, invalid, as it violated the fifth amendment of the Federal Constitution, declaring that no person shall be deprived of liberty or property without due process of law. Such liberty was held to embrace the right to make contracts for the purchase and sale of labor, of which the act in question constituted an unlawful invasion.

**Action Against Husband by Wife.**—The report of the case of *Copp v. Copp*, 68 Atlantic Reporter, 458, decided by the Supreme Judicial Court of Maine, discloses an attempt on the part of a wife to collect from her husband on a claim for labor as cook in his logging camp. Plaintiff also sought to establish a lien on certain logs. The court held that no judgment could be obtained by a wife against her husband, and sustained a demurrer to the declaration.

**Proximate Cause.**—Plaintiff had agreed to maintain fences about his premises along defendant's railroad track. A cow escaped through a defect in the fence, and was struck by defendant's engine. In *Southern Ry. Co. v. Dickens*, 45 *Southern Reporter*, 215, an action for the death of the animal, defendant contended that the failure to keep up the fence proximately contributed to plaintiff's damage, which contention the Supreme Court of Alabama refused to sustain.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in *THE WASHINGTON LAW REPORTER*, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

H. W. Sobon, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. PETER C. J. TREANOR, 828 Penna. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,389. Administration. [Seal.] 24-St

Cole & Donaldson, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Emma F. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of June, 1908. R. GOLDEN DONALDSON, 611 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,388. Administration. [Seal.] 24-St

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Worthington Dorsey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by George Howard, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,316. Administration. [Seal.] 24-St

### Legal Notices.

William D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles C. Casey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 3d day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,889. Administration. [Seal.] 24-St

Geo. Francis Williams, Attorney

In the Supreme Court of the District of Columbia.  
Theodore S. Clark et al., Executors, v. William A. Gordon, Trustee, et al. No. 27,808. Equity Doc. 61.

The object of this suit is to declare the complainants to be entitled to payment of a certain note secured by deed of trust belonging to the estate of their testator, Louis Clark, Jr., out of a fund in the hands of said defendant Gordon, trustee, and for an accounting by said trustee, and requiring the defendant, Morris Clark, to perfect their title to said note by endorsing the same, he being the payee therein named. On motion of the plaintiff, it is this 11th day of June, A. D. 1908, ordered that the defendants, Morris Clark, Marcus A. Meyers, and Adolph Horowitz, trustee, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and *The Evening Star* before said day. By [Seal] the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-St

E. L. White, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of J. Hubley Ashton, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of June, 1908. ELIZABETH ASHTON WILSON, Administratrix c. t. a., by E. L. White, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,428. Administration. [Seal.] 24-St

Thomas Walker, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of George Grice, Deceased.  
No. 15,258. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by David Jones, it is ordered this 11th day of June, A. D. 1908, that Julius L. Grice and Josephine Smith, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in *The Washington Law Reporter* and *The Washington Bee* once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than [Seal] thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James K. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of June, 1908. JAMES K. JONES, JR., 631 Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,328. Administration. [Seal.] 24-3t

**Howard Boyd, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hermann H. Goets, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. Mrs. JENNIE L. GOETZ, Colonial Beach, Va. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,048. Administration. [Seal.] 24-3t

**R. F. Downing and G. A. Berry, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Sexton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. FRANK SEXTON, 127 F st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,274. Administration. [Seal.] 24-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harriet H. Davison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. MARY C. DE GRAFFENRIED, 1835 17th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,305. Administration. [Seal.] 24-3t

**Julius I. Peyser and Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louis Spanier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1908. LEAH LOEB, 1840 Columbia Road; SARAH FRIEDLANDER, 914 Mass. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,317. Administration. [Seal.] 24-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Clara Smith Coffin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. EUGENE COFFIN, Fort Sam Houston, Texas. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,318. Administration. [Seal.] 24-3t

**Wm. H. White, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rosetta Prather, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. WILLIAM HENRY WHITE, 416 5th st. N. W., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,315. Admn. [Seal.] 24-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Mary E. Gullick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,228. Administration. [Seal.] 24-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles E. Wood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,162. Administration. [Seal.] 24-3t

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Philip F. Gerry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. MARGARITA S. GERRY, 2944 Macomb st., Cleveland Park. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,293. Administration. [Seal.] 24-3t

**Legal Notices.**

**Malcolm Hufty, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**In the Matter of Resin W. Darby, Bankrupt.**  
 Bankruptcy No. 448.

Joseph L. Crupper, trustee, having reported to the court that he has sold at public auction to himself, the said Joseph L. Crupper, the real estate described in said report and being those two certain tracts of land lying and being in Arlington District, Alexandria County, and partly in Fairfax County, Virginia, and being the same property conveyed to Resin W. Darby by two certain deeds from Ellen J. McElheney, recorded in the county clerk's office of Alexandria County, Virginia, in liber W No. 4, page 809, and liber Z No. 4, page 147, respectively, less about 5 acres, 3 rods and 39 poles of land sold off the above property by deed from Resin W. Darby to Rufus H. Darby recorded in said clerk's office in liber W No. 4, page 426, leaving about 16½ acres of land, for the sum of \$7,000 cash, it is, by the court this 10th day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed unless cause to the contrary be shown on or before the 10th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter and The Washington Times and a copy of said report and this order be mailed to each of the scheduled creditors of said bankrupt at least 10 days before said

[Seal] date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 24-St

**Wolf & Rosenberg, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Willard F. Hallam, Plaintiff, v. John P. Carrothers,**  
**Defendant.** At Law, No. 50,386.

The object of this suit is to recover from the defendant the sum of thirty-five hundred dollars (\$3,500), with interest and costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 10th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice.

A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-St

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Ellen D. Lane, Deceased.**  
 No. 15,294. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The American Security and Trust Company, the executor named in the said will, it is ordered, this 10th day of June, A. D. 1908, that Duncan Church, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

[Seal] Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk.

**W. W. Wicker and J. C. Heald, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Durham W. Stevens, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. KATHERINE D. STEVENS, 49 Brady st. Detroit, Mich. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,303. Administration. [Seal.] 24-St

**Legal Notices.**

**Sheehy & Sheehy, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John T. Lewis, Deceased.**  
 No. 14,577. Administration Docket 37.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by H. Jackson Taylor, it is ordered this 10th day of June, A. D. 1908, that Oliver Lewis, W. Wesley Lewis, Georgianna Barnes, Elizabeth Middleton, Sarah Shreeves, Mary E. Lewis, James Lewis, Jefferson Lewis, Sybil Willet, Hilda Hinman, William Lewis, John Harvey Lewis, Mary Richardson, Jennie Richardson, John Willet, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**W. H. Robeson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of James Smith, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of June, 1908. SAML. A. PUTMAN, by W. H. Robeson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,782. Administration. [Seal.] 24-St

**John C. Heald, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ephraim S. Randall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of June, 1908. LOUISA S. RANDALL, 1353 Wallach Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,311. Administration. [Seal.] 24-St

**Bradley & Bradley, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Charles B. Knight, Plaintiff, v. Henry Butterfield, Defendant.** At Law, No. 49,548.

The object of this suit is to recover a debt of one thousand two hundred and seventeen and three one-hundredths (\$1,217.08) dollars with interest thereon from the 4th day of May, A. D. 1907, together with all costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 8th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-St

[Seal] Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-St



**Legal Notices.****SECOND INSERTION.**

E. A. Jones and G. C. Shinn, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Thomas R. Harney, Plaintiff, v. Griffith C. Barry et al.,  
Defendants. In Equity, No. 27,848.

ORDER OF PUBLICATION.  
The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is this 4th day of June, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said return day. HARRY M. CLABAUGH, Chief Justice. A true copy.  
[Seal]  
Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-St

R. A. Ford, Attorney  
In the Supreme Court of the District of Columbia,  
Holding the Probate Court.  
Estate of Mary E. Loeffler, Deceased.  
Administration, No. 15,220.  
Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George W. Loeffler, it is ordered, this 4th day of June, A. D. 1908, that Harry P. Loeffler, and all others concerned, appear in said court on Monday, the 15th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 23-St

Jno. B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court  
This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edmund E. Masson, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 25th day of June, 1908, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer, by Jno. B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,391. Administration. [Seal.] 23-St

Jno. B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth B. King, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 22d day of June, 1908, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer, by Jno. B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,468. Admn. [Seal.] 23-St

**Legal Notices.**

Jas. B. Archer, Jr., and John L. Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eliza C. Eli, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of June, 1908. DANIEL E. ELI, 1303 35th st. N. W.; JAMES B. ARCHER, Jr., 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,307. Administration. [Seal.] 23-St

F. G. Coldren, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of John Brown, Deceased.  
No. 15,284. Administration Docket 83.  
Application having been made herein for letters of administration on said estate, by Isidor Kaufman, it is ordered this 1st day of June, A. D. 1908, that all heirs at law and next of kin, and all others concerned, appear in said court on Monday, the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice.  
[Seal]  
Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-St

B. F. Leighton and C. Clinton James, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Lorraine Lippard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of June, 1908. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,129. Administration. [Seal.] 23-St

Joseph H. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Ida D. Bailey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8d day of June, 1908. LA FAYETTE M. HERSHAU, 1460 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,256. Administration. [Seal.] 23-St

Jas. B. Archer, Jr., John L. Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harry Coggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. ERNESTINA A. COGGINS, 1540 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,258. Administration. [Seal.] 23-St



**Legal Notices.**

**J. J. Darlington and Leon Tobriner, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re **Christiana Strauss, Deceased.**  
Administration, No. 15,226.

Application having been made for the probate of the last will and testament of said deceased and for letters testamentary on said estate by Hugh A. Kane, the executor therein named, it is ordered this 1st day of June, A. D. 1908, that Howard Siebel, James P. Kane, George Siebel, Vincent Kiernan, Mark Kiernan and Veronica Kiernan, and all others concerned, appear in said court on Monday, the sixth (6th) day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the

[Seal] first publication to be not less than thirty days before said return day. By the Court:  
**ASHLEY M. GOULD, Justice.** A true copy. Attest:  
**Wm. C. Taylor, Deputy Register of Wills.** 23-St

**Ralston & Siddons, Solicitors**

In the Supreme Court of the District of Columbia.  
**Adele S. Bartley v. Julia R. Buchignani** (nee Rickman), **E. R. Rickman, Mary R. Steever** (infant).  
No. 27,770. Equity Docket 61.

ORDER OF PUBLICATION.

The object of this suit is to obtain a construction of a deed from one Francis Mejaskey and wife to Mary R. Steever, West Steever, James N. Rickman and the complainant, Adele S. Bartley, conveying all of lot ninety-one (91) in said Mejaskey's subdivision of lots in square one hundred and ninety-one (191), situate and being in the city of Washington, District of Columbia, said deed being recorded among the land records of said District of Columbia, on November 12, 1889, in Liber 1481, at folio 376, et seq., and for the partition of said lot. On motion of the complainant, it is this 4th day of June, A. D. 1908, ordered that the defendants, Julia R. Buchignani, E. R. Rickman and Mary R. Steever, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published at least once a week for three successive

[Seal] weeks in The Washington Law Reporter.  
(Signed) **HARRY M. CLABAUGH, Chief Justice.** A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-St

**Henry H. Glassie, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Roderick Cochran, deceased**, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of June, 1908, at 10 o'clock A. M., at the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of June, 1908. **AL. LISTER COCHRANE, 60 The Kenesaw, Wash., D. C.,** by **Henry H. Glassie, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia,** Clerk of the Probate Court. No. 14,545. Administration. [Seal.] 23-St

**P. A. Bowen, Jr., Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **India Bell, late of the District of Columbia, deceased.** All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1908. **PHILANDER A. BOWEN, JR., 1418 G St. N. W.** Attest: **WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,198. Administration. [Seal.] 23-St

**Legal Notices.**

**Gordon & Gordon and Erskine Gordon, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Agnes Kayser v. Agnes M. Albrecht et al.**

Equity, No. 27,488.

The trustees having reported to the court that they have sold at public auction to Hanora Keliher part of lots 171 and 169 in square 1254, being 1515 34th street, for \$975; to Annie C. Keliher part of lots 171 and 169 in square 1254, being 1517 34th street, for \$975; to Charles H. Hurley part of lot 40 in square 1231, being 8418 Prospect avenue, for \$2,000, and to Henrietta Emrich subplot 2 in square 1211, being 2909 Olive avenue, for \$2,150, it is, by the court, this 2d day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter

[Seal] and the Evening Star. **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by **Wms. F. Lemon, Asst. Clerk.** 23-St

**J. Wilmer Latimer, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of **Dixon Fullerton, Deceased.**  
No. 15,217. Administration Docket 38.

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by **Argus L. Fullerton, surviving executor** therein named, it is ordered this 1st day of June, A. D. 1908, that **Francis Savage Sinclair, Frank Marvin Sinclair, William Arthur Brumback**, and all others concerned, appear in said court on Thursday, the 2d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. **ASHLEY M. GOULD, Justice.** Attest: **Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 23-St

**P. R. Hilliard, Attorney**

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In the Matter of the Estate of **Patrick Reddington, Deceased.** No. 15,087.

Upon consideration of the petition of **Bridget Durken, administratrix c. t. a.** of the estate of **Patrick Reddington, deceased**, filed herein the 9th day of May, 1908, setting forth that the personal property of said decedent is not sufficient to pay the debts due by his estate and praying for the sale of part of original lot 3, in square 469, together with the improvements thereon, known as premises numbered 611 C street northwest, in the city of Washington, District of Columbia, for the purpose of paying the debts due by said decedent's estate, it is, by the court, this 1st day of June, A. D. 1908, ordered that **Margaret McGowan, of Cross Molina, Mayo County, Ireland, and John Reddington, of Killala, Mayo County, Ireland**, and all others concerned, appear in this court on Tuesday, the 7th day of July, A. D. 1908, and answer the exigencies of said petition. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. **ASHLEY M. GOULD, Justice.** Attest: **M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.** 23-St

**THIRD INSERTION.**

**James H. Taylor, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary J. Nourse, late of the District of Columbia, deceased.** All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 22d day of May, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 22d day of May, 1908. **JAMES B. NOURSE, Wisconsin ave. N. W.; RICHARD DOUGLAS SIMMS, 3229 R st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,159. Administration. [Seal.] 22-St

**Legal Notices.**

**Coldren & Fenning, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Henry Boudette, otherwise known as Henry Boudet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 27th day of May, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 27th day of May, 1908. **FREDERICK A. FENNING**, Century Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,300. Administration. [Seal.] 22-3t

**Joseph J. Darlington, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles B. Church, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of May, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of May, 1908. **CHARLES W. CHURCH**, 1012 C st.; **S. W.; WILLIAM A. H. CHURCH**, 8th and C sts. S. W.; **MARY A. CHURCH**, 306 11th st. S. W.; **JOSEPH J. DARLINGTON**, 410 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,281. Administration. [Seal.] 22-3t

**R. R. Horner, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of William J. Peters,  
Deceased. Administration No. 15,125.

**ORDER OF PUBLICATION.**

Application having been made by Julia A. Peters and Julia E. Tibbs for probate of the last will and testament of William J. Peters, deceased, and for letters testamentary thereon, it is, by the court, this 28th day of May, A. D. 1908, ordered, that William F. Tibbs, and all others concerned, appear in said court on or before the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Post and The Washington Law Reporter once each week of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. **ASHLEY M. GOULD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 22-3t

[Filed May 28, 1908. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

**James H. Whitmore et al. v. Anna M. Whitmore et al.** No. 26,763. In Equity.

Upon consideration of the report of Hayden Johnson and Raymond A. Heiskell, trustees appointed by the court in the above entitled cause, reporting the sale to Anna M. Whitmore for the price of \$2,500, of part of original lot 12 in square 438, described as follows, viz: Beginning on 7th street 66 feet and four inches from the northeast corner of said square and running thence south on said 7th street 18 feet 8 inches; thence west 66 feet 4 inches; thence north 18 feet six inches; thence east 66 feet 4 inches to the beginning, excepting therefrom the north 8 and 3/4 inches front on 7th street by the depth of 80 feet, it is by the court, this 28th day of May, 1908, ordered that said sale be, and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 30th day of June, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The

[Seal] Washington Law Reporter. **ASHLEY M. GOULD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 22-3t

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**Legal Notices.**

**Wm. W. Boardman, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Rudolph Hasler, Deceased.

No. 15,265. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sarah Hasler, it is ordered this 22d day of May, A. D. 1908, that Alfred A. Hasler or Alfred A. Harper, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

**Frank E. Elder, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Robert Henry Payne, Deceased.

No. 15,270. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Margaret Payne, it is ordered, this 26th day of May, A. D. 1908, that the unknown heirs at law and next of kin of Robert Henry Payne and all others concerned, appear in said court on Thursday, the 3d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

**Hamilton, Colbert, Yerkes & Hamilton, Attorneys**

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise Novel, Deceased.

No. 15,264. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Leonide Delarue, and it appearing to the satisfaction of the court that decedent left no known next of kin, it is ordered, this 22d day of May, A. D. 1908, that the unknown next of kin of said decedent, and all others concerned, appear in said court on Wednesday, the 1st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 22-3t

**Fred'k Elchelberger, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. H. Christian, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 15th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 22d day of May, 1908. **THE WASHINGTON LOAN AND TRUST CO.** by **Fred'k Elchelberger**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,425. Administration. [Seal.] 22-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**J. A. Maedel, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Christian Xander, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of May, 1908. HENRY XANDER, MINNIE ISEMAN, 909 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,278. Administration. [Seal.] 22-31

**Ralston & Siddons, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of John K. Pfeil, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. CHRISTIANA PFEIL, 224 23d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,292. Administration. [Seal.] 22-31

**G. Percy McGlue, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Richard Ryan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of May, 1908. JAMES F. SHEA, 643 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,798. Administration. [Seal.] 22-31

**Geo. F. Collins, Attorney**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia ancillary letters of administration on the estate of Herman L. Livingston, late of the State of Ohio, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of May, 1908. WILLIAM M. PORTER, 494 La. ave. N. W., Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,002. Administration. [Seal.] 22-31

**Gordon & Gordon, Attorneys**  
Supreme Court of the District of Columbia,  
Holding a Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Edward Libbey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of May, 1908. WILLIAM KING, 1151 16th st. N. W.; HENDERSON SUTER, 3026 N st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,262. Administration. [Seal.] 22-31

**Legal Notices.****FOURTH INSERTION.**

**Eugene A. Jones, Geo. C. Shinn, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Thomas R. Harney, Plaintiff, Unknown Heirs, Devisees and Alienees of Buller Cocke; Unknown Heirs, Devisees and Alienees of James Davidson; and Unknown Heirs, Devisees and Alienees of Richard Forrest. In Equity, No. 27,647.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lots numbered twelve (12) and thirteen (13) in square ten hundred and sixty-six (1066) in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 20th day of April, 1908, ordered that the unknown heirs, devisees and alienees of Buller Cocke; unknown heirs, devisees and alienees of James Davidson, and unknown heirs, devisees and alienees of Richard Forrest, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. May 1, 8; June 5, 12; July 3, 10

**Eugene A. Jones and Geo. C. Shinn, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Frank S. Collins, Plaintiff, v. Unknown Heirs, Devisees, and Alienees of Harritta Cornish, Deceased. In Equity, No. 27,646.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to the east thirteen feet seven inches (13' 7") front on I street by the full depth thereof of lot lettered "D" in Frederick May's subdivision of part of square seven hundred ninety-seven (797), in the city of Washington, District of Columbia, as per plat of said subdivision recorded in book N. K., page 137, in the office of the surveyor of the District of Columbia. On motion of complainant, by solicitor Eugene A. Jones, it is, this 20th day of April, A. D. 1908, ordered that the unknown heirs, devisees, and alienees of Harritta Cornish, deceased, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. [Seal] M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. May 1, 8; June 5, 12; July 3, 10.

**FIFTH INSERTION.**

**J. Dawson Williams and B. H. Warner, Jr., Solicitors**  
In the Supreme Court of the District of Columbia.  
Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Majla. Their Unknown Heirs, Alienees, and Devisees, if Any or All be Dead. In Equity, No. —.

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, Jesse B. Rank, to sublots 34, and 66 to 88, both inclusive, and the east 6.25 feet of sublot 66 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant, George W. Montgomery, of sublots 35 to 41, both inclusive, and the east 6.25 feet of sublot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in [Seal] The Washington Law Reporter and The Evening Star newspaper before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. April 10, 17; May 15, 22; June 12, 19

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JUNE 19, 1908

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#### Purchase by Trustee From Cestui Que Trust.

In *Byrne v. Jones*, decided by the U. S. Circuit Court of Appeals for the Eighth Circuit (159 Fed., 321), it is held that a trustee or agent may purchase the trust property directly from his cestui que trust sui juris, or principal, on condition that the latter intends that the former shall buy, that the former discloses to the latter, before the contract is made, every fact learned by him in his fiduciary relation which is material to the sale, that he exercises the utmost good faith, that no advantage is taken by misrepresentation, concealment of, or omission to disclose important information gained as trustee or agent, and that the entire transaction is fair and open. But the foregoing condition, declares the court, is inexorable. Any omission by the trustee or agent to disclose any fact material to the sale learned by him in such fiduciary relation, any material misrepresentation, concealment, or other disregard of the condition renders the sale and contract for it voidable, at the election of the cestui que trust or principal.

#### Disbarment of Attorneys Set Aside.

Mr. Justice Wright, of the Supreme Court of this District, on June 17, 1908, announced his decision in the cases of James H. Spalding, Edward W. Spalding, Milo B. Stevens & Co., and Edgar T. Gaddis against the Secretary of the Interior, recently argued before him. The attorneys were charged with alleged malpractice in dealing in bounty warrants, and following orders for their

disbarment filed petitions for mandamus to compel their restoration to the rolls of attorneys entitled to practice before the Interior Department. The answer of the respondent setting up his right to issue the order of disbarment was demurred to by the petitioners on the ground, among others, that they had been denied a constitutional right in not having been allowed to cross-examine certain persons whose depositions were made the basis of the charge of malpractice. Mr. Justice Wright sustained the demurrer. In his opinion, after defining "liberty," as that term is employed in the Constitution, it is held that the law contemplates the right to practice before the Department after induction and establishment therein as such liberty, of which no one may be deprived without due process of law.

In the case of *Harvey Spalding*, the pleadings developed a question of fact as to whether or not a hearing had been accorded him, and in this case the demurrer was overruled.

#### Master and Servant; Injury to Servant; Res Ipsa Loquitur.

In *Byers v. Carnegie Steel Co.*, decided by the United States Circuit Court of Appeals for the Sixth Circuit (159 Fed., 347), the applicability of the doctrine of *res ipsa loquitur* in actions by employees for negligent injury is considered by the court. Though generally in such actions the fact of injury raises no presumption of negligence on the employer's part, it is declared that when the character of an accident and the circumstances in which it occurs are such as to point strongly to a condition which is abnormal and dangerous and to a long-continued existence of such condition, under circumstances indicating that the employer by reasonable care should have known of such condition, and where the evidence shows that the employee suffered injury through no negligence of his own and through no risk assumed by him, and that such abnormal and dangerous condition was the proximate cause of the accident, the fact of the relation of employer and employee does not forbid an inference of the employer's negligence from the fact of the accident, notwithstanding the absence of direct testimony, by personal observation, of the existence of the specific defect alleged to have caused the accident. In the case on hearing it appeared that the injury was caused by the sudden rising of an elevator due to a defect in the hydraulic cylinder; and the evidence was held sufficient to justify an inference that the sudden rising was due to a defective valve, and that such defect was or should have been known to defendant by ordinary care in inspection, thus meeting the burden of proof imposed on plaintiff.

## Court of Appeals of the District of Columbia.

JAMES RUDOLPH GARFIELD, SECRETARY  
OF THE INTERIOR, APPELLANT,

v.

THE UNITED STATES EX REL. BENJAMIN  
H. CARTFORD.

PUBLIC LANDS; PATENT ISSUED BY MISTAKE; CANCEL-  
LATION; MANDAMUS.

1. An application for patent for public lands was denied by the Land Department on the ground that a portion of the land embraced in it was unsurveyed, and the decision was affirmed by the Secretary of the Interior, who directed the issue of a patent only for the part surveyed. By mistake of a clerk in the Land Office a patent was prepared which, in violation of this order, embraced the entire tract applied for, and the patent was passed to execution and record without discovery of the mistake. Subsequently, before delivery of the patent to the applicant, the mistake was discovered and the patent recalled and canceled. Held, that not only had the Secretary of the Interior the right to correct the mistake when called to his attention before the patent had actually passed out of his possession, but that the patent as executed was void by reason of the fact that it undertook to convey lands shown by the records of the Land Department to be unsurveyed, and a petition for mandamus to compel delivery of the patent denied.
2. The absence of power to cancel a patent issued in pursuance of a final decision of the Land Department, and which is approved by the records of the department to be in all respects regular, does not preclude the correction of a clerical mistake, apparent on the record, while, at least, the patent remains in the possession of the officers of the department.

No. 1871. Decided May 5, 1906.

APPEAL by respondent from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,028, granting a petition for a writ of mandamus. Reversed.

Mr. E. G. BEST, Mr. GEO. W. WOODRUFF and Mr. F. W. CLEMENTS for the appellant.

Mr. W. L. FORD and Mr. W. E. COLEMAN for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District ordering the appellant, as Secretary of the Interior, to deliver a patent to the relator for one hundred and sixty acres of land in the State of Oregon.

The petition alleges that the relator, Benjamin H. Cartford, being a person having the qualifications required by the act of Congress approved June 3, 1878, entitled an act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory, filed on February 28, 1903, in the local land office at Roseburg in the State of Oregon, his sworn statement for the purchase of the east half of the northwest quarter and the north half of the northeast quarter of section 6, township 25, south of range 6 west of Willamette Meridian in the State of Oregon. That said land, prior to said entry, had been surveyed, the corners marked and a plat including the same prepared and filed in the General Land Office. That the required proof was furnished and petitioner paid the sum of \$2.50 per acre, amounting to \$400, with all the necessary fees, at the local land office, and on July 13, 1903, received the cash certificate. The said proof and papers were forwarded to the General Land Office, and petitioner

was notified on August 19, 1904, to show cause why his entry of the east half of the northwest quarter of said section 6 should not be cancelled, on the ground that the same had not been surveyed. Petitioner appealed from the order of cancellation to the Secretary who affirmed the same. A motion for review of that decision was denied July 11, 1906. On October 9, 1906, petitioner filed a relinquishment of his right to said eighty acres of land, and an application for the return of the purchase money paid therefor. On September 21, 1907, he withdrew said relinquishment, no action having been taken thereon. The said sum of \$400 paid for said one hundred and sixty acres is still in the possession of the United States. That on November 19, 1906, a patent was duly executed to petitioner for both of said parcels of land and recorded in the General Land Office. Said patent was transmitted to the local office with instructions to deliver the same to petitioner. Said patent was returned to the Commissioner of the General Land Office, without offer of delivery or notice given to petitioner, on December 28, 1906. That he thereafter demanded the said patent and the same was refused. The Commissioner, on August 27, 1907, directed the cancellation of said patent and offered to issue a patent for the other parcel, the right to which had never been questioned. Petitioner protested against said action and appealed to the Secretary who affirmed the same on October 19, 1907, but allowed the petitioner thirty days within which to relinquish to the United States the said parcel of eighty acres aforesaid, otherwise cancellation to be made. Petitioner refused to file a relinquishment and so notified the Secretary on November 29, 1907. That petitioner practised no fraud in the making of his entry and the prosecution of his claim, and the rights of no other applicants were involved. That his patent had been unlawfully withheld, and he prayed a mandamus to compel the Secretary to deliver the same to him.

The pertinent facts in the return are: That the entry of the said east half of the northwest quarter was illegal for the reason that it was unsurveyed land. That the decision that this land was not subject to entry appears on the records of the General Land Office, and the final, or patent certificate proved by the Secretary shows upon its face the cancellation of the entry as to said eighty acres before described. That by mistake or inadvertence the patent was written for both tracts, signed and recorded. That there was no authority for its issue, and the same has been withheld from petitioner, for want of authority to grant the said patent, in accordance with his duty. It is denied that the repayment of the purchase money has ever been refused.

The petitioner demurred to this return, and the court having sustained the same, ordered the mandamus to issue as prayed.

The contention of the appellee was that the patent having been regularly signed, sealed and recorded, passed the title of the United States without actual delivery to the petitioner, and that the sole power to cancel the same is a judicial power, not within the jurisdiction of the Secretary and that it became the plain duty of the Secretary to deliver the same into the possession of the petitioner upon his demand.

This contention was sustained by the learned justice presiding in the court below, as shown by

his opinion which is contained in the record, upon the authority of the following decisions of the Supreme Court of the United States: *U. S. v. Schurz*, 102 U. S., 378; *Bicknell v. Comstock*, 118 U. S., 149; *In re Emblen*, 161 U. S., 52; *Germania Iron Co. v. U. S.*, 166 U. S., 379.

The appellant contends that this case, by reason of its special facts and circumstances is not governed by the foregoing decisions. He contends that the eighty acres of land, not having been surveyed, was not subject to entry and sale under the law; that the Secretary having ascertained this fact decided that he had no power to issue a patent therefor, and that the patent, issued through inadvertence thereafter, was void. It is not controverted that the act of June 3, 1878, under which the entry was made, authorized the sale of surveyed lands only, and that there is no other statute conferring the power to purchase and receive patents to unsurveyed lands. It was the duty of the Secretary in passing upon applications to determine in the first instance whether the land entered had been surveyed. He decided from the records of the office that the eighty acres aforesaid had not been surveyed, and his decision appeared upon the final or patent certificate. Notwithstanding this, by some unexplained mistake of the employee charged with the duty of preparing patents for execution, the patent was made to embrace the unapproved entry as well as that which had been approved. The decision of the Secretary had never been recalled, and the patent was executed and recorded without knowledge of this mistake.

That the second parcel of land had not been surveyed, and was, therefore, not subject to entry, must also be taken as a fact admitted by the demurrer to the return.

The facts in the case of *U. S. v. Schurz*, supra, were different. As was said therein, page 401: "The land in the present case had been surveyed, and, under their control, the land in that district generally had been opened to preemption, and sale. The question whether any particular tract, belonging to the Government was open to sale, preemption, or homestead right, is in every instance a question of law as applied to the facts for the determination of those officers. Their decision of such questions and of conflicting claims to the same land by different parties is judicial in its character. It is clear that the right and duty of deciding all such questions belong to those officers, and the statutes have provided for original and appellate hearings in that department before the officers of higher grade up to the Secretary. They have, therefore, jurisdiction of such cases and such provision is made for the correction of errors in the exercise of that jurisdiction. When their decision of such a question is finally made and recorded in the shape of the patent, how can it be said that the instrument is absolutely void for such errors as these? If a patent should issue for land in the State of Massachusetts, where the Government never had any, it would be absolutely void. If it should issue for land once owned by the Government, but long before sold and conveyed by patent to another who had possession, it might be held void in a court of law on the production of the senior patent. But such is not the case before us. Here the question is whether this land had been withdrawn from the control of the Land Department by certain acts of other persons, which include it within the limits

of an incorporated town. The whole question is one of disputed law and disputed facts. It was a question for the land officers to consider and decide before they determined to issue McBride's patent. It was within their jurisdiction to do so. If they decided erroneously, the patent may be voidable, but not absolutely void."

In that case, then, the question for determination had been decided, and the patent issued in accordance therewith. As the issue and record of the patent amounted to a delivery so as to pass the title of the United States, there remained but the ministerial duty of actual delivery to the patentee. In this connection we make another excerpt from the opinion (p. 403): "We are of opinion that when all we have mentioned has been consciously and purposely done by each officer engaged in it, and where these officers have been acting in a matter within the scope of their duties, the legal title to the land passes to the grantee, and with it the right to the possession of the patent. No further authority to consider the patentee's case remains in the Land Office, no right to consider whether he ought in equity, or on new information, to have the title or receive the patent."

Apparently, in order that the scope of the decision might not be misunderstood, the court also said: "We do not say that there may not be rare cases where all this has been done (the regular issue and record of the patent), and yet the officer in possession of the patent be not compellable to deliver it to the grantee. If, for instance, the Secretary whom the President is authorized by law to appoint to sign his name to the patent should do so when he has been forbidden by the President, or if, by some mere clerical mistake, the intention of the officer performing an essential part in the execution of the patent has been frustrated. It is not necessary to decide on all the hypothetical cases that can be imagined." It is unnecessary to discuss the other cases cited as they do not extend the scope of the decision in the *Schurz* case. In the case at bar the question which the officers of the Land Office were called upon to determine had been decided adversely to the applicant for the patent, and their decision had been affirmed by the Secretary who had directed that no patent should issue for the unsurveyed tract. But by some mistake of a clerk the patent was prepared in violation of this direction or order, and passed to execution and record without discovery of the mistake. As recited in one of the hypothetical cases stated in the above quotation from the opinion in the *Schurz* case, "by some clerical mistake, the intention of the officer performing an essential part in the execution of the patent has been frustrated."

The conditions mentioned take this case out of the rule applied to the special facts of the *Schurz* case, and bring it within another equally well established by the decision of the same court. *Bell v. Hearne*, 19 How., 252, 262; *Morton v. Nebraska*, 21 Wall., 660, 674; *Burfenning v. Chicago, etc., Ry. Co.*, 163 U. S., 321, 324, and others that need not be cited.

In *Bell v. Hearne*, supra, John Bell had applied for the purchase of certain land. His application having been approved in the local office and a certificate issued to him therefor, a duplicate certificate, as required by law, was prepared and transmitted to the General Land Office. By some



inadvertence the clerk entered the name of James Bell instead of John in this certificate. In due course patent was issued thereon and forwarded for delivery to James Bell. It remained undelivered, and several years thereafter was placed in the hands of John Bell, who returned it to the Land Office where it was canceled for error and a new patent issued and delivered to John Bell. James Bell was the Brother of John and appears to have acted as his agent in making the original application and entry. The land was afterwards sold under execution on a judgment against James Bell, and an action was begun by John Bell in a State court of Louisiana to recover possession of the purchaser at said sale. The question to be determined was whether the Commissioner had the authority to receive from John Bell the patent erroneously issued to James, cancel the same and issue another to John. The Supreme Court of Louisiana answered this question in the negative. Their judgment was reversed. Mr. Justice Campbell, who delivered the opinion of the court, said: "The question, in our opinion, is exceedingly clear. The Commissioner of the General Land Office exercises a general superintendence over the subordinate officers of his department, and is clothed with liberal powers of control, to be exercised for the purposes of justice, and to prevent the consequences of inadvertence, irregularity, mistake, and fraud, in the important and extensive operations of that officer for the disposal of the public domain. The power exercised in this case is a power to correct a clerical mistake, the existence of which is shown plainly by the record, and is a necessary power in the administration of any department." *Morton v. Nebraska*, supra, was an action of ejectment against certain tenants of the State of Nebraska. Plaintiff had entered the lands in question and received a patent therefor. The State of Nebraska set up in defense the invalidity of the patent on the ground that the locations were without authority of law because the lands, being saline lands, were not subject to such entry. As the lands were found to be saline lands by the records of the Land Department, and as such not subject to entry, the patent was declared void. The court said: "It does not strengthen the case of the plaintiffs that they obtained certificates of entry, and that patents were subsequently issued on these certificates. It has been repeatedly decided by this court that patents issued for lands which have been previously granted, reserved from sale, or appropriated, are void. The executive officers had no authority to issue a patent for the lands in controversy because they were not subject to entry, having been previously reserved, and this want of power may be proved by a defendant in an action at law." *Burfenning v. Railway Co.*, supra, was an action of ejectment in which the plaintiff claimed under a patent from the United States. The land, when entered, was situated within the limits of an incorporated town. Such lands were excluded from preemption by existing statutes. It was held that the patent was void. As regards the effect of the action of the Land Office in recognizing the entry and issuing the patent it was said by Mr. Justice Brewer, after affirming the finality of a decision of the Land Office on questions of fact within its power of determination: "But it is also equally true that when by an act of Congress a tract of land has been reserved from homestead

and preemption, or dedicated to any special purpose, proceedings in the Land Department in defiance of such reservation or dedication, although culminating in a patent, transfer no title, and may be challenged in an action at law. In other words, the action of the Land Department can not override the expressed will of Congress, and convey away public lands in disregard or defiance thereof." After citing the case of *Morton v. Nebraska* as very closely in point, it was further said: "In that case it will be observed that the records disclosed that the lands were saline lands when the proceedings in the Land Department were had. So the case was not one in which the department determined a fact upon parol evidence, but one in which it acted in disregard of an established and recorded fact."

Applying the doctrines of those cases to the special facts of this case, we are of the opinion that the Secretary of the Interior was not bound to deliver the patent to the petitioner containing the eighty acres of unsurveyed land. Such land was not open to entry under the act of June 3, 1878. Whether it was surveyed or unsurveyed land was a question which it was necessary for the Land Department to decide. From an inspection of the record of surveys required by law to be kept, the Commissioner of the General Land Office determined that this land had not been surveyed. On appeal to the Secretary this decision was affirmed and the patent was ordered to be issued for the other which it appeared had been surveyed. This decision was of record in the office and the final certificate for the issue of the patent showed this limitation. Through inadvertence of the officer charged with the duty of preparing the patent, this was not heeded, and the patent covering both tracts was passed to issue and record without discovery of the mistake. The Land Department had not, therefore, as was the fact in the *Schurz* case, determined this question in favor of the applicant, and issued the patent in accordance with that decision, but had decided that the land was unsurveyed and, therefore, not subject to entry and patent. By clerical mistake or inadvertence the patent issued in direct violation of this decision, and thereby frustrated the deliberate intention of the Commissioner and the Secretary. No just right can be founded on this mistake, and the Secretary had the power to correct it, when called to his attention, before the patent had actually passed out of his possession. It is not a case of cancellation of a patent regularly issued after a determination in the patentee's favor, upon new information as to the facts on which that decision was founded, as was the attempt in *Schurz's* case, but the correction of a mistake in the issue, by matter of record, as in *Bell v. Hearne*, supra. In the former case the title passed in pursuance of a decision, and by the express intention of the Land Department. There was no fraud or mistake, and the attempt was to exercise an independent power of cancellation upon facts thereafter called to the attention of the Secretary. In the latter case, the records of the office showed that the land was reserved from entry by purchasers, and the Land Department decided that no patent could issue for that reason. Notwithstanding these facts, by clerical mistake, or inadvertence, the patent was prepared and issued in direct opposition to the decision, and contrary to the intention of the

Commissioner of the General Land Office, and the Secretary of the Interior. Aside from the fact that the patent issued by mistake only, we think that it was void because it undertook to convey land shown, by the records of the Land Department, and decided by its officers, to be unsurveyed land.

The absence of power to cancel a patent issued in pursuance of a final decision of the Land Department, and which is approved by the records of the department to be regular in every respect, does not preclude the correction of a clerical mistake, apparent on the record, while, at least, the patent remains in the possession of the officers of the Land Department. As said in *Bell v. Hearne*, supra: "The power to correct a clerical mistake, the existence of which is shown plainly by the record, is a necessary power in the administration of every department."

For the reasons given, the judgment will be reversed with costs, and the cause remanded with direction to discharge the rule to show cause and dismiss the petition.

Reversed.

UNITED STATES OF AMERICA EX REL.

MARY E. NALLE, APPELLANT,

v.

WILLIAM D. HOOVER ET AL., APPELLEES.

**BOARD OF EDUCATION; POWER TO DISMISS TEACHERS FOR INCOMPETENCY.**

Under the act of Congress of June 20, 1906, creating the Board of Education of this District, that board has power to inquire into the qualifications of a teacher in the public schools, and upon finding her deficient in the necessary academic and pedagogic equipment of a competent teacher and upon the written recommendation of the superintendent of schools may dismiss her from service as a teacher, without filing formal charges and according her a hearing as provided in section 10 of said act.

No. 1857. Decided May 5, 1908.

APPEAL by petitioner from an order of the Supreme Court of the District of Columbia, at Law No. 49,364, denying a petition for mandamus. Affirmed.

Mr. JOHN C. GITTINGS and Mr. J. M. CHAMBERLIN for the appellant.

Mr. STUART McNAMARA for the appellees.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

Appellant, relator below, filed her petition in the Supreme Court of the District of Columbia praying that a writ of mandamus issue to the respondents, requiring them to reinstate her to the position of a teacher in the public schools of the District. It appears that relator had, for many years prior to September, 1906, been a teacher in the public schools of the District of Columbia. The respondents constitute the Board of Education of the District, duly appointed as such under the provisions of an act of Congress approved June 20, 1906. At a meeting of the said board held in September, 1906, respondents had under consideration the general qualifications of the teachers of the District. Upon the written recommendation of the superintendent of schools, the relator, at a meeting of the board held on September 14, 1906, was dismissed from the service as a teacher.

Relator, in her petition, alleged, in substance, that she had been a teacher in the public schools of the District of Columbia since 1873; that she had been informed by the superintendent of schools on September 13, 1906, that he had nominated her to the board for a position on the teaching force of the District, but that he was informed that the board would not endorse his recommendation. She alleged that two days later she was informed by the secretary of the board that "she had been dismissed from the public schools of the District of Columbia for the good of the service." She further alleged that she requested the board to present her with a copy of the charges against her, and that she be given a hearing and an opportunity to refute the same; that, in answer thereto, she was notified that her request had been laid on the table. Relator then averred that the action of the board of education in dismissing her was null and void, and that the same was done contrary to the recommendation of the superintendent of schools, as provided for by section 2 of the act of Congress of June 20, 1906, and in direct violation of and contrary to the letter and spirit of section 10 of said act, and that notwithstanding the action of said board, she is of right and in law a teacher in the public schools of the District of Columbia, and as such entitled to all the rights, dignities, privileges, and emoluments of that position.

In answer to the petition respondents alleged, in substance, that at the time they assumed their duties as a board of education they found a large number of teachers, including the relator, who had been employed by the previous board of education; that respondents, acting as a board, began to provide the schools with teachers for the fiscal year ending June 30, 1907; that in so doing they continued in the service those of the teachers then employed who were competent and qualified to teach, but that, upon examination, the relator was found not sufficiently qualified in all respects to be competent to continue in the service, "but was deficient in the necessary academic and pedagogic equipment of a competent teacher;" that at a meeting of the board on September 14, 1906, when the said board was dealing with the appointment and continuance of the teachers, upon the recommendation of the superintendent the relator was dismissed by the vote of the board; that no charge or accusation of any kind was filed with the respondents against the relator, and accordingly said relator was not dismissed because of any charge or any accusation against her; that the relator was never charged with an offense or accused so as to be put upon trial, or to be under investigation within the meaning of section 10 of the act of June 20, 1906.

To this answer the relator demurred. Upon hearing, the demurrer was overruled, and leave granted by the court to file a traverse to respondents' answer. The traverse raised two issues of fact, as set forth in the brief of relator: "First, that the relator was dismissed solely because she was deficient in the necessary academic and pedagogic equipment of a competent teacher; and, second, that there was not filed with the board any charge or accusation against relator, and she was not dismissed because of any accusation or charge filed against her." Upon motion of respondents, the court struck out all of the several grounds of traverse that raised an issue as to whether any

charges were filed against relator, and narrowed the submission of proof to the one question, whether she was dismissed solely because, upon examination, she was found to be deficient in the necessary academic and pedagogic equipment of a competent teacher.

Upon this issue, relator offered as a witness a member of the board of education, who testified that no examination was ever made by the board as to the qualifications of relator. Relator then exhibited and offered in evidence several letters from Dr. Chancellor, superintendent of schools, which, it was insisted, tended to show that there was no question as to relator's fitness for her position, in the sense of being in every way qualified, both mentally and physically, and that such questions were never discussed by the board in considering her case, and that her dismissal was not recommended by him upon that ground. Upon objection of respondents' counsel, the court refused to consider said letters. Relator then called Dr. Chancellor as a witness, who testified that "he attended all meetings of the board of education in September, 1906, was present at the meeting held by the board of education September 14, 1906, when Miss Nalle was dismissed; recalled no discussion at that meeting of Miss Nalle's qualifications, academic or pedagogic. He further testified that at a meeting a few days before the 14th at which he remembers all of the members were present, her fitness for the public schools was discussed; that they did not discuss this feature, or that and the other, but they did discuss generally relator's fitness for continuation in the service, and that he knows that it was the consensus of opinion, or in other words, he understood that it was the opinion of the board, or of substantially the entire board that she ought to be dismissed from the service because she was not qualified to continue as a teacher, and witness wholly understood that members of the board at that conference were talking as members of the board; whereupon he made his written recommendation that she be dismissed for the good of the service and the board acted upon that." Upon this evidence, relator rested her case. Counsel for respondents moved for judgment on the ground that the evidence showed that relator had been dismissed by authority of law, which motion was sustained and judgment entered by the court. From this judgment, relator prosecuted this appeal. The case comes here upon the following assignment of error:

"The court below erred:

"1st. In overruling the petitioner's demurrer to the answer.

"2nd. In sustaining the respondents' motion to strike out the 1st, 2nd, 3rd, 6th, and 9th grounds assigned by the traverse of the relator to the answer.

"3rd. In refusing to admit in evidence and consider the Chancellor letters.

"4th. In sustaining the respondents' motion denying writ and dismissing petition."

The provisions of the act of Congress, material for the purposes of this inquiry, are as follows:

"Sec. 2. That the control of the public schools of the District of Columbia is hereby vested in a board of education to consist of nine members.

"No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any

other subordinate to the superintendent of schools shall be made by the board of education, except upon the written recommendation of the superintendent of schools.

"Sec. 3. That the board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years, and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the board of education. He shall have a seat in the board and a right to speak on all matters before the board, but not the right to vote.

"Sec. 6. No teacher or officer in the service of the public schools of the District of Columbia at the time of the passage of this act shall, by the operation of this act, be required to take any examination, either mental or physical, to be continued in the service. The board of examiners . . . shall consist of the superintendent and two heads of departments of the white schools for the white teachers and of the superintendent and two heads of departments of the colored schools for colored teachers. The designation of such heads of departments for membership on these boards to be made by the board of education annually.

"Sec. 10. When a teacher is on trial or being investigated, he or she shall have the right to be attended by counsel and by at least one friend of his or her selection."

We think that the main question involved in this appeal can be disposed of without a separate consideration of each assignment of error. It is insisted by counsel for relator that the board of education has no inherent power to either appoint or dismiss a teacher, except upon the written recommendation of the superintendent. We need not stop to consider that question, since the record discloses that the relator was dismissed by the board upon the written recommendation of the superintendent. In that particular, the letter of the statute was strictly followed. It is also contended by counsel for relator that the board exceeded its authority in dismissing the relator without a formal charge being filed and a hearing had at which relator could be present and represented by counsel.

It clearly appears from the record that there were no such charges filed with the board as would authorize a hearing under section 10 of the act. It was sought to establish the existence of charges by the introduction of certain letters written by the superintendent after the dismissal of relator. The letters were properly excluded by the trial court. They were not letters of the board, and could have no binding effect upon it. It is immaterial if the superintendent, as indicated by one of his letters, had recommended the retention of the relator on the teaching force. There was nothing to prevent him from changing his mind and recommending her dismissal, as was done. There is nothing in the statute that makes the recommendation of the superintendent binding upon the board. The board may refuse to endorse his recommendation. It is not required to elect or dismiss a teacher because he has so recommended. The recommendation is only a basis for action by the board. It is not controlling upon it. Hence, any letters the superintendent may have written to outsiders, expressing his opinion as to relator's qualifications or what governed the

board in its action, could have no legal bearing on the issue here involved.

The answer of respondents sets forth that relator was dismissed because she was lacking in the academic and pedagogic equipment of a competent teacher, and that no charges of any kind were filed against her. This is specifically denied by the traverse of relator. The evidence of the witness Chancellor, however, clearly discloses that relator was dismissed from the service upon the recommendation of the superintendent after an inquiry made by the board as to her professional qualifications to teach in the public schools of the District. The whole question before us is whether or not the board had power to make such an inquiry and dismiss relator without according her a hearing as provided in section 10 of the act. There is every reason why a teacher should not be appointed or dismissed except upon the recommendation of the superintendent. The superintendent is ex officio a member of the board. He was undoubtedly placed in this position in order that he might be present at the meetings of the board and advise it of the condition of the schools, the qualifications of the teachers, and make recommendations from time to time looking to the improvement of the schools. The statute does not contemplate that the board shall convert itself into a court to try the questions involved in these recommendations before passing upon the same. The statute, in broad terms, places the general control of the schools within the board. To hold that, before a teacher could be dismissed from the service for lack of professional qualifications, specific charges must be filed and trial had, counsel present, and witnesses examined, would convert the board into a quasi judicial body, and, to a large extent, limit it in the exercise of its administrative discretion. We can not conceive of Congress intending to inaugurate such a system.

As to new teachers the recommendation of the superintendent is a condition precedent to their election by the board. The knowledge gained by the superintendent in supervising the examination of a new teacher is deemed indispensable to the proper guidance of the board. But the mere ability of an applicant to pass the examination, while sufficient to procure a position in the schools, is only one step in determining the professional qualifications of a teacher. The superintendent, after such employment, has especial opportunity to study the work of the teacher in the classroom, and form an opinion as to his or her general qualifications. Congress, in its wisdom, recognizing the superior opportunity thus afforded the superintendent, provided that before a teacher should be dismissed from the service the board should have the recommendation of the superintendent to that effect. This applied to teachers in the service at the date of the passage of the act as well as to those subsequently employed.

It was not intended by this act in providing a specific method of examination of teachers prior to their employment, to prohibit the board from inquiring into the qualifications of one already in the service, and dismissing such teacher in its discretion, if found in the judgment of the board to be inefficient. There is no connection or conflict between the inquiry the board may make in such a case and the examination required to be imposed upon applicants for positions in the schools. Neither do we think there is

any connection or conflict between the inquiry the board may make as to the qualifications of a teacher in the service, with the view to his or her dismissal, and section 10 of the act. Section 10 is an independent provision for the protection of teachers against charges that are not confined to the professional qualifications of the teacher. Charges under this section need not arise upon the recommendation of the superintendent, but may come from outside sources. It embraces matters not peculiarly within the knowledge of the superintendent or board, issues of fact that are the subject of proof, and not the mere expression of opinion, charges upon which the taking of evidence is necessary for the enlightenment of the board, in order that it may intelligently exercise its discretion. This investigation is not primarily instituted for the purpose of leading to the dismissal of the teacher. Its purpose is to give the accused an opportunity to answer the charges preferred. It is as much for the information and guidance of the superintendent and the board as for the general public who have an especial interest in the welfare of the schools. The disclosures made at the trial may form the basis for the subsequent discharge of the teacher, but that is not the purpose of the inquiry. On the other hand, the professional qualifications of a teacher are peculiarly within the knowledge of the superintendent; they are not so much the subject of proof as a matter of opinion. It is proper that, before the board acts, the judgment of the superintendent should be consulted. He is charged with the duty of passing upon the qualifications of teachers both before and after employment. If the dismissal of a teacher is, in every instance, to be made the subject of judicial inquiry, the discretion of the superintendent and the board in the appointment of a teacher may, with equal propriety, be subjected to a similar inquiry. In short, respondents would be shorn of all the discretionary power usually belonging to such officers, and which, we think, is clearly vested in them by the terms of this act.

We conceive it to be the duty of the court to construe this statute liberally, so as to give the board as broad discretion as possible in carrying out its objects. Public policy demands that, in the management and control of the public schools, final administrative authority shall be somewhere vested. Here, it is vested in the board of education of the District. It is not the duty or prerogative of the courts to interfere by writ of mandamus with the board in the exercise of its discretion in matters pertaining to the control and management of the public schools of the District, unless there is such a gross abuse of discretion as amounts to a total lack of authority to act.

The extraordinary writ of mandamus will not be granted to correct mere errors of judgment committed by the board, so long as it acts within the authority conferred by statute. If the board had power to dismiss relator upon the recommendation of the superintendent of schools, without granting her such a hearing as is provided for in section 10 of the act, we will not stop to inquire into the method employed by the board in arriving at its decision. If the power exists, the writ can not issue; if the board had jurisdiction to act, the writ must be denied. The writ will not issue to correct errors where jurisdiction exists.

We are of the opinion that the board of educa-

tion, in dismissing relator from the schools, acted within the authority vested in it by the act of Congress. The judgment is affirmed with costs, and it is so ordered.

Affirmed.

DISTRICT OF COLUMBIA, PLAINTIFF IN  
ERROR,

v.

WILLIAM DEWALT.

VETERINARY MEDICINE; STATUTORY CONSTRUCTION.

1. While penal statutes are to be strictly construed, they are to be interpreted according to the manifest import of the language employed and the evils sought to be overcome, and are not to be construed so strictly as to defeat the obvious intention of the legislature.
2. The act of February 1, 1907, regulating the practice of veterinary medicine in this District, construed and held to prohibit such practice in violation of the provisions of said act.

No. 1863. Decided May 5, 1908.

IN ERROR to the Police Court of the District of Columbia. Reversed.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the plaintiff in error.

Mr. J. E. McNALLY and Mr. EDWIN FORREST for the defendant in error.

Mr. Justice ROBB delivered the opinion of the Court:

This writ of error brings into review a decision of a judge of the Police Court of the District dismissing a complaint against the defendant in error charging him with engaging in the practice of veterinary medicine in violation of the act of February 1, 1907 (34 St. L., pt. 1, 870), entitled "An act to regulate the practice of veterinary medicine in the District of Columbia," on the ground that said act does not in terms prohibit such practice.

The purpose of Congress as evidenced by the title to this act was to *regulate*, that is, *control*, the practice of veterinary medicine in this District. Manifestly that purpose was not accomplished if the view of the trial court is correct. An analysis of the whole statute will determine that question since "in construing a statute we are not always confined to a literal reading," but "may consider its object and purpose, the things with which it is dealing, and the condition of affairs which led to its enactment so as to effectuate rather than destroy the spirit and force of the law which the legislature intended to enact." *American Tobacco Co. v. Werckmeister*, 207 U. S., 284.

Section 1 of the act provides for the appointment of a board of examiners in veterinary medicine and prescribes their qualifications and tenure.

Section 2 provides for the organization of the board, that it shall keep an official record of its meetings "and also an official register of *all applicants for licenses*, which register shall show the name, age, place and duration of residence of each applicant, the time spent in the study of veterinary medicine, in and out of medical schools, and the names and locations of all medical schools which have granted said applicant any degree or certificate of attendance upon lectures, and it shall also show whether said applicant was *rejected* or *licensed* under this act, and said register shall be *prima facie* evidence of all matters contained therein."

Section 3 specifically ordains that from and after the passage of the act "*all persons desiring to practice veterinary medicine or any branch thereof in the District of Columbia, or who shall desire to hold themselves out to the public*" as so practicing "*shall make application to said board of examiners in veterinary medicine for a license so to do.*" The section then prescribes the qualifications of applicants for licenses and the fees to be collected therefor. The section further provides that the board shall issue licenses "to all who are found by such examinations to be, in the judgment of said board, competent to so practice."

Section 4 provides that reciprocal arrangements in respect to licenses may be made by the board with analogous boards of the several States and Territories, but it is provided that "no arrangement shall be made under the provisions of this section which will be liable to lower the standard of practice of veterinary medicine in the District."

Section 5 directs that a license shall be issued to any person who has received a diploma from a lawfully authorized veterinary college and who has on or before the passage of the act maintained an office for the practice of veterinary medicine in the District. The section further directs that any person not a graduate of a veterinary college, who, for five years previous to the passage of the act, has been continuously engaged in the practice of medicine in the District and maintained in the District an office for the purpose shall be permitted to be examined without fee "and upon proof of satisfactory knowledge of veterinary medicine shall be registered and licensed as a practitioner of veterinary medicine."

Section 6 provides that an appeal may be taken by an applicant for a license from the decision of the board of examiners to the Commissioners of the District, whose duty it then becomes to appoint a board of review who may re-examine the applicant.

Section 7 requires every person practicing veterinary medicine in the District, or representing himself or permitting himself to be represented as so practicing, to "display or cause to be displayed conspicuously in his usual place of business *his license to practice in said District.*" The section further requires such place of business to be open during all reasonable hours for inspection by any representative of the police department or of the board of examiners, "so far as may be necessary to examine such licenses."

Section 8 defines the practice of veterinary medicine and provides "that any person may without compensation apply any medicine or remedy and perform any operation for the treatment, relief, or cure of any sick, diseased, or injured animal."

Section 9 exempts from the operation of the act veterinary surgeons in the army or in the employ of the Agricultural Department who are graduates of regular veterinary colleges and also regularly licensed veterinarians in actual consultation from other States or called from other States to attend cases in the District.

Section 10 permits the board, after notice and hearing, to revoke or suspend for a time certain the license of any person to practice veterinary medicine in the District for several stated causes. An appeal is provided to the Commissioners.

Section 11 ordains "that any person who shall violate or aid or abet in violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not more than two hundred dollars, or by imprisonment in the workhouse of the District for not more than six months, or by both such fine and imprisonment."

By section 12 it is made the duty of the corporation counsel or one of his assistants to prosecute violations of the act.

The foregoing analysis of this comprehensive act clearly shows it to have been the purpose of Congress to raise the standard of practice of veterinary medicine in this District by prescribing qualifications for all practitioners and requiring such practitioners to be licensed. The second section of the act makes the record of the board *prima facie* evidence as to whether or not an applicant has received a license. Section 3 requires *all* persons, who wish to practice veterinary medicine or any branch of it in the District, or who desire to hold themselves out as so practicing, to make application for a license, and section 7 commands the conspicuous display of a license by all such persons. It was conceded in the argument at bar that, if the defendant had been prosecuted for not applying for a license, the complaint would not have been subject to attack. This concession illustrates the almost ridiculous result of a literal reading of the statute. Under such an interpretation a person by applying for a license, even though not possessing the qualifications required by the act, and even though not receiving a license, escapes all liability to prosecution. It was the substance and not the shadow with which Congress was dealing. The object of the act was not to provide idle forms and ceremonies, but to rid the District of quack horse doctors. Whilst it is true that penal statutes are to be strictly construed, it is equally as true that they are to be interpreted according to the manifest import of the language employed and the evils sought to be overcome. *Nor. Securities Co. v. U. S.*, 193 U. S., 358. Courts should not, and do not, construe penal statutes so strictly as to defeat the obvious intention of the legislature. *U. S. v. Lacher*, 134 U. S., 624.

In the case at bar there is no room for misunderstanding as to the evil which the act seeks to remedy, and the natural and logical import of the language employed leaves no room for doubt as to the manner in which the remedy is to be applied. The act commands any one desiring to practice veterinary medicine to apply for a license; that a record be kept showing whether or not a license is issued as the result of such application; and that no one shall practice, or hold himself out as practicing, veterinary medicine in the District without conspicuously displaying such a license. Anyone violating *any* of these provisions is liable to prosecution. To hold that such clear, consistent, and closely connected provisions permit the practice of veterinary medicine in this District without a license would be an affront to the law-making power and evidence of an unwillingness on our part to give force and effect to its clearly expressed will.

Reversed.

Actions — Splitting Accounts. — That several items entered in one account were furnished at

different times and upon different orders is held, in *Williams-Abbott Electric Co. v. Model Electric Co.*, 134 Iowa, 865, 112 N. W., 181, 13 L. R. A. (N. S.), 529, not to avoid the rule that an account can not be split into different demands, but that, in case there is an attempt to do so, a judgment upon one portion of it will bar further action.

Bills and Notes. — Forgery of part of the signatures of makers to a joint and several note is held in *First Nat. Bank v. Shaw*, 149 Mich., 362, 112 N. W., 904, 13 L. R. A. (N. S.), 426, to be no defense against a bona fide holder by makers whose signatures were genuine.

The right of an innocent payee to recover, under the uniform negotiable instruments law, against a party who signed and delivered the instrument in blank to a third person, where the latter, in filling out the blanks, exceeded his authority, is denied in *Vander Ploeg v. Van Zuuik* (Iowa), 112 N. W., 807, 13 L. R. A. (N. S.), 490.

Carriers. — One who in good faith, and for the purpose of taking passage, signals an approaching electric car in the manner prescribed by the carrier, the motorman responding to that signal by sounding the whistle or setting the brakes, is held, in *Karr v. Milwaukee Heat, Light & Traction Co.* (Wis.), 113 N. W., 62, 13 L. R. A. (N. S.), 283, thereby to become a passenger, and therefore it is held that the question whether or not he is guilty of contributory negligence in crossing the track for the purpose of boarding the car must be considered with reference to his character as a passenger.

The liability of a carrier for expulsion from its train of a passenger in the enforcement by health officers of quarantine regulations is denied in *Baldwin v. Seaboard Air Line R. Co.*, 128 Ga., 567, 58 S. E., 35, 13 L. R. A. (N. S.), 360.

A railroad company is held, in *Doggett v. Chicago, B. & Q. R. Co.*, 134 Iowa, 690, 112 N. W., 171, 13 L. R. A. (N. S.), 364, not to be liable for the act of its conductor in compelling a crippled trespasser to leave a moving train, from which a person of ordinary capacity might have alighted in safety, unless he knew of the trespasser's crippled condition; and the fact that, in the exercise of ordinary care, he might have known of it, is held to be immaterial.

In harmony with the only other authorities which have passed upon this exact question, it is held, in *Birmingham R. Light & P. Co. v. McDonough* (Ala.), 44 So., 960, 13 L. R. A. (N. S.), 445, that one who, having paid his fare on the motor car, passes from it onto the trailer by alighting from one to the ground and boarding the other, the cars being in charge of separate conductors, may be required to pay a second fare in accordance with a rule of the company requiring conductors to collect fare from every passenger on their cars.

An interurban railroad company stopping a car for the accommodation of a passenger who desires to alight at a highway crossing is held, in *McGovern v. Interurban R. Co.* (Iowa), 111 N. W., 412, 13 L. R. A. (N. S.), 476, to be bound to exercise at least reasonable care to enable her to alight with as little danger as practicable; and, if the passenger is invited to alight at a place more hazardous than that at which the car might have been conveniently stopped, the carrier is held to be negligent.



That it is not negligent, as matter of law, for the conductor in charge of an ordinary street-car to permit a hand bag to be set down in and to remain in the aisle, is declared in *Pitcher v. Old Colony Street R. Co.* (Mass.), 81 N. E., 876, 13 L. R. A. (N. S.), 481.

A railroad company which customarily permits an employee of a newspaper publisher to take the papers from the station gate to the mail car at a time when passengers are hurrying to and fro on the platform is held, in *Mangum v. North Carolina R. Co.* (N. C.), 58 S. E., 913, 13 L. R. A. (N. S.), 589, to be liable for his negligent use of the truck on which they are carried, which results in injury to a passenger.

**Bankruptcy—Liens.**—The right of a lien creditor to enforce his lien after a discharge of the debtor in bankruptcy is sustained in *Flint v. Chaloupka* (Neb.), 111 N. W., 465, 13 L. R. A. (N. S.), 309, in harmony with the great weight of authority.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Carlisle & Luckett, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah J. Obold, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. ANNIE C. TUOHY, 1713 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,388. Administration. [Seal.] 25-St

John C. Heald, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Nicholas Drummond, Deceased.  
No. 15,236. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary Ann Murray, it is, this 19th day of June, 1908, ordered that Thomas J. Murray and Mary Bane, and all others concerned, appear in said court on Tuesday, the 21st day of July, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

### Legal Notices.

Geo. Francis Williams, Solicitor

In the Supreme Court of the District of Columbia.  
Anna Marie Roche, a Minor, by Burr N. Edwards,  
Her Guardian; Catharine A. Roche, Widow, v.  
Catharine Honora Roche, an Infant. No. 27,817.  
In Equity.

George Francis Williams, trustee in the above-entitled cause, having reported that he has sold all of the real estate involved therein, namely, part of original lot twenty-five (25) in square five hundred and fifteen (515), situate in the city of Washington, in the District of Columbia, and known as premises 1088 Fourth street northwest, unto Gelsomino Cerrone, for the sum of two thousand two hundred and ten dollars (\$2,210), it is, this 12th day of June, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 13th day of July, 1908. Provided this order be published once a week for three successive weeks before said last-mentioned day in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

Milton Strasburger and W. M. Williams, Solicitors  
In the Supreme Court of the District of Columbia.

Julian F. Scott et al. v. Corinne L. Scott et al.  
Equity. No. 28,834.

Milton Strasburger and W. Mosby Williams, trustees, having reported an offer from John F. Allwine of one hundred dollars cash for the north 20 feet front on 12th street by the full depth that width of lot one in square 984, and from Henry A. Herrell and John F. O'Neill of one hundred dollars cash for lot six in square 1107, as set forth in their report filed in this cause, it is this 12th day of June, 1908, ordered that said trustees be and they are hereby authorized and directed to accept said offers, and that the sale of said property to said parties respectively will be ratified and confirmed on the 13th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of the three successive issues of The Washington Law Reporter published prior to the last mentioned day. By the Court: HARRY M. CLABAUGH, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary L. Town, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. EDNA D. T. NEWTON, care of Blair & Thom, Colorado Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,330. Admn. [Seal.] 25-St

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Ann M. Frain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. HENRY W. TIPPETT, 1417 E st. S. E., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,168. Admn. [Seal.] 25-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.****R. R. Horner, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Broadus, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **PERRY H. CARSON**, 924 8d st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,838. Administration. [Seal.] 25-St

**J. A. Maedel, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Bratton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **GEORGE C. GLICK**, 1508 E st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,372. Administration. [Seal.] 25-St

**Armond W. Scott, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie E. Smyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1908. **CLARA H. SMYTHE**, 908 N. 29th st., Richmond, Va. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,337. Administration. [Seal.] 25-St

**F. Edward Mitchell, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Allen Sawtell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. **ANDREW NOLTE**, 19 Eye st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,808. Administration. [Seal.] 25-St

**Wilton J. Lambert, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of William T. Solomon, Deceased.  
No. 12,008. Administration Docket —**

Application having been made herein for re-probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William H. Underdue, it is ordered this 16th day of June, A. D. 1908, that Nicodemus Solomon and Josephine Solomon, and all others concerned, appear in said court on Thursday, the 23d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD**, Justice. Attest: **WM. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

**Legal Notices.****Alex. H. Bell, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert F. Costello, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. **MINNIE E. COSTELLO**, 45 H st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,814. Administration. [Seal.] 25-St

**Lester & Price, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Anton Remy, Deceased.  
No. 15,246. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Elizabeth Remy, it is ordered this 12th day of June, A. D. 1908, that Katherine McKay and Sophronia Limmer, and all others concerned, appear in said court on Tuesday, the 21st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

**SECOND INSERTION.****H. W. Sohon, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **PETER C. J. TREANOR**, 328 Penna. ave. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,290. Administration. [Seal.] 24-St

**Cole & Donaldson, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Emma P. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of June, 1908. **R. GOLDEN DONALDSON**, 811 14th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,288. Administration. [Seal.] 24-St

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Worthington Dorsey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by George Howard, Treasurer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,816. Administration. [Seal.] 24-St

**Legal Notices.**

Malcolm Hufty, Attorney  
In the Supreme Court of the District of Columbia,  
In the Matter of Rezin W. Darby, Bankrupt.  
Bankruptcy No. 448.

Joseph L. Crupper, trustee, having reported to the court that he has sold at public auction to himself, the said Joseph L. Crupper, the real estate described in said report and being those two certain tracts of land lying and being in Arlington District, Alexandria County, and partly in Fairfax County, Virginia, and being the same property conveyed to Rezin W. Darby by two certain deeds from Ellen J. McElheney, recorded in the county clerk's office of Alexandria County, Virginia, in liber W. No. 4, page 809, and liber Z. No. 4, page 147, respectively, less about 5 acres, 3 rods and 89 poles of land sold off the above property by deed from Rezin W. Darby to Rufus H. Darby recorded in said clerk's office in liber W. No. 4, page 428, leaving about 16½ acres of land, for the sum of \$7,000 cash, it is, by the court this 10th day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed unless cause to the contrary be shown on or before the 10th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter and The Washington Times and a copy of said report and this order be mailed to each of the scheduled creditors of said bankrupt at least 10 days before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 24-31

Wolf & Rosenberg, Attorneys  
In the Supreme Court of the District of Columbia.  
Willard F. Hallam, Plaintiff, v. John P. Carrothers, Defendant. At Law, No. 50,886.

The object of this suit is to recover from the defendant the sum of thirty-five hundred dollars (\$3,500), with interest and costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 10th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-31

William A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Ellen D. Lane, Deceased.  
No. 15,394. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The American Security and Trust Company, the executor named in the said will, it is ordered, this 10th day of June, A. D. 1908, that Duncan Church, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-31

W. W. Wicker and J. C. Heald, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Durham W. Stevens, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. KATHERINE D. STEVENS, 49 Brady st., Detroit, Mich. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,308. Administration. [Seal.] 24-31

**Legal Notices.**

Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John T. Lewis, Deceased.  
No. 14,577. Administration Docket 87.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by A. Jackson Taylor, it is ordered this 10th day of June, A. D. 1908, that Oliver Lewis, W. Wesley Lewis, Georgianna Barnes, Elizabeth Middleton, Sarah Shreeves, Mary E. Lewis, James Lewis, Jefferson Lewis, Sybil Willet, Hilda Hinmon, William Lewis, John Harvey Lewis, Mary Richardson, Jennie Richardson, John Willet, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-41

W. H. Robeson, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of James Smith, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of June, 1908. SAML. A. PUTMAN, by W. H. Robeson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,789. Administration. [Seal.] 24-31

John C. Heald, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ephraim S. Randall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of June, 1908. LOUISA S. RANDALL, 1853 Wallach Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,811. Administration. [Seal.] 24-31

Bradley & Bradley, Attorneys  
In the Supreme Court of the District of Columbia.  
Charles B. Knight, Plaintiff, v. Henry Butterfield, Defendant. At Law, No. 49,548.

The object of this suit is to recover a debt of one thousand two hundred and seventeen and three one-hundredths (\$1,217.08) dollars with interest thereon from the 4th day of May, A. D. 1907, together with all costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 8th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-31

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of James K. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of June, 1908. **JAMES K. JONES, JR.,** 621 Colorado Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,826. Administration. [Seal.] 24-St

**Howard Boyd, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Hermann H. Goetz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **Mrs. JENNIE L. GOETZ**, Colonial Beach, Va. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,048. Administration. [Seal.] 24-St

**R. F. Downing and G. A. Berry, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Sexton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **FRANK SEXTON**, 1227 F st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,274. Administration. [Seal.] 24-St

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harriet H. Davison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **MARY C. DE GRAFFENRIED**, 1885 17th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,805. Administration. [Seal.] 24-St

**Julius I. Peyser and Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louis Spanier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1908. **LEAH LOEB**, 1840 Columbia Road; **SARAH FRIEDLANDER**, 914 Mass. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,817. Administration. [Seal.] 24-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Clara Smith Coffin, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **EUGENE COFFIN**, Fort Sam Houston, Texas. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,818. Administration. [Seal.] 24-St

**Wm. H. White, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Rosetta Frather, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **WILLIAM HENRY WHITE**, 416 5th st. N. W., Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,815. Admn. [Seal.] 24-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Mary E. Gulick, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,223. Administration. [Seal.] 24-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles E. Wood, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of May, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,162. Administration. [Seal.] 24-St

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Philip F. Gerry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **MARGARITA S. GERRY**, 2944 Macomb st., Cleveland Park. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,228. Administration. [Seal.] 24-St

**Legal Notices.**

**William D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles C. Casey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 3d day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,389. Administration. [Seal.] 24-St

**Geo. Francis Williams, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Theodore S. Clark et al., Executors, v. William A. Gordon, Trustee, et al. No. 27,868. Equity Dec. 61.**

The object of this suit is to declare the complainants to be entitled to payment of a certain note secured by deed of trust belonging to the estate of their testator, Louis Clark, Jr., out of a fund in the hands of said defendant Gordon, trustee, and for an accounting by said trustee, and requiring the defendant, Morris Clark, to perfect their title to said note by endorsing the same, he being the payee therein named. On motion of the plaintiff, it is this 11th day of June, A. D. 1908, ordered that the defendants, Morris Clark, Marcus A. Meyers, and Adolph Horowitz, trustee, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By [Seal] the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-St

**E. L. White, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of J. Hubley Ashton, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of June, 1908. ELIZABETH ASHTON WILSON, Administratrix c. t. a., by E. L. White, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,428. Administration. [Seal.] 24-St

**Thomas Walker, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of George Grice, Deceased.**  
**No. 15,258. Administration Docket.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by David Jones, it is ordered this 11th day of June, A. D. 1908, that Julius L. Grice and Josephine Smith, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James

Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**Legal Notices.****THIRD INSERTION.**

**J. Wilmer Latimer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Dixon Fullerton, Deceased.**  
**No. 15,217. Administration Docket 88.**

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by Argus L. Fullerton, surviving executor therein named, it is ordered this 1st day of June, A. D. 1908, that Francis Savage Sinclair, Frank Marvin Sinclair, William Arthur Brumback, and all others concerned, appear in said court on Thursday, the 3d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-St

**J. J. Darlington and Leon Tobriner, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In re Christiana Strauss, Deceased.**  
**Administration, No. 15,236.**

Application having been made for the probate of the last will and testament of said deceased and for letters testamentary on said estate by Hugh A. Kane, the executor therein named, it is ordered this 1st day of June, A. D. 1908, that Howard Siebel, James P. Kane, George Siebel, Vincent Kiernan, Mark Kiernan and Veronica Kiernan, and all others concerned, appear in said court on Monday, the sixth (6th) day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the [Seal] first publication to be not less than thirty days before said return day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Attest: Wm. C. Taylor, Deputy Register of Wills. 23-St

**Henry H. Glassie, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Roderick Cochrane, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 26th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of June, 1908. ALISTER COCHRANE, 60 The Kenesaw, Wash., D. C., by Henry H. Glassie, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,545. Administration. [Seal.] 23-St

**P. A. Bowen, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of India Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of June, 1908. PHILANDER A. BOWEN, JR., 1418 G st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,193. Administration. [Seal.] 23-St

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**Legal Notices.**

**E. A. Jones and G. C. Shinn, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
 Holding an Equity Court.  
**Thomas B. Harney, Plaintiff, v. Griffith C. Barry et al.,**  
**Defendants.** In Equity, No. 27,648.  
**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is this 4th day of June, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said return day. HARRY M. CLABAUGH, Chief Justice. A true copy.

Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-8t

**R. A. Ford, Attorney**  
**In the Supreme Court of the District of Columbia,**  
 Holding the Probate Court.  
**Estate of Mary E. Loeffler, Deceased.**  
 Administration, No. 15,220.  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by George W. Loeffler, it is ordered, this 4th day of June, A. D. 1908, that Harry P. Loeffler, and all others concerned, appear in said court on Monday, the 13th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before [Seal] the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. A true copy. Attest: James Tanner, Register of Wills. 23-8t

**Jno. B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edmund E. Maason, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Thursday, the 25th day of June, 1908, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer, by Jno. B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,891. Administration. [Seal.] 23-8t

**Jno. B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Elizabeth B. King, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 22d day of June, 1908, at 10 o'clock A. M., as the time, and said courtroom as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 3d day of June, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer, by Jno. B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,468. Admn. [Seal.] 23-8t

**Legal Notices.**

**Jas. B. Archer, Jr., and John L. Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eliza C. Eli, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of June, 1908. DANIEL E. ELI, 133 35th st. N. W.; JAMES B. ARCHER, JR., 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,307. Administration. [Seal.] 23-8t

**F. G. Coldren, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**Estate of John Brown, Deceased.**  
 No. 15,284. Administration Docket 88.  
 Application having been made herein for letters of administration on said estate, by Isidor Kaufman, it is ordered this 1st day of June, A. D. 1908, that all heirs at law and next of kin, and all others concerned, appear in said court on Monday, the 6th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said [Seal] return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-8t

**B. F. Leighton and C. Clinton James, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Loraine Lippard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of June, 1908. C. CLINTON JAMES, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,128. Administration. [Seal.] 23-8t

**Joseph H. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Ida D. Bailey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of June, 1908. LA FAYETTE M. HERSHAU, 1460 T st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,256. Administration. [Seal.] 23-8t

**Jas. B. Archer, Jr., John L. Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Harry Coggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. ERNESTINA A. COGGINS, 1540 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,258. Administration. [Seal.] 23-8t



**Legal Notices.**

Gordon & Gordon and Erskine Gordon, Solicitors  
In the Supreme Court of the District of Columbia.  
Agnes Kayser v. Agnes M. Albrecht et al.  
Equity, No. 27,488.

The trustees having reported to the court that they have sold at public auction to Hanora Kelher part of lots 171 and 169 in square 1254, being 1515 84th street, for \$975; to Annie C. Kelher part of lots 171 and 169 in square 1254, being 1517 84th street, for \$975; to Charles H. Hurley part of lot 40 in square 1221, being 3413 Prospect avenue, for \$2,000, and to Henrietta Emrich sublot 2 in square 1211, being 2909 Olive avenue, for \$2,150, it is, by the court, this 2d day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 7th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter

[Seal] and the Evening Star. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 23-St

Ralston & Siddons, Solicitors

In the Supreme Court of the District of Columbia.  
Adele S. Bartley v. Julia R. Buchignani (nee Rickman), E. R. Rickman, Mary R. Steever (infant).  
No. 27,770. Equity Docket 61.

**ORDER OF PUBLICATION.**

The object of this suit is to obtain a construction of a deed from one Francis Mejaskey and wife to Mary R. Steever, West Steever, James N. Rickman and the complainant, Adele S. Bartley, conveying all of lot ninety-one (91) in said Mejaskey's subdivision of lots in square one hundred and ninety-one (191), situate and being in the city of Washington, District of Columbia, said deed being recorded among the land records of said District of Columbia, on November 12, 1889, in Liber 1431, at folio 376, et seq., and for the partition of said lot. On motion of the complainant, it is this 4th day of June, A. D. 1908, ordered that the defendants, Julia R. Buchignani, E. R. Rickman and Mary R. Steever, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published at least once a week for three successive

[Seal] weeks in The Washington Law Reporter. (Signed) HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 23-St

E. A. Jones and G. C. Shinn, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devises, and Alienees of such of them as are dead; and the Unknown Heirs, Devises, and Alienees of Julianna Barry, Deceased.

In Equity, No. 27,648.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and alienees of such of them as are dead; and the unknown heirs, devisees, and alienees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington

[Seal] Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 29; June 19, 26; July 24, 31.

Justice blanks of every description for sale at this office.

**Legal Notices.**

P. R. Hilliard, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Patrick Reddington,  
Deceased. No. 15,687.

Upon consideration of the petition of Bridget Durken, administratrix c. t. a. of the estate of Patrick Reddington, deceased, filed herein the 8th day of May, 1908, setting forth that the personal property of said decedent is not sufficient to pay the debts due by his estate and praying for the sale of part of original lot 8, in square 452, together with the improvements thereon, known as premises numbered 611 C street northwest, in the city of Washington, District of Columbia, for the purpose of paying the debts due by said decedent's estate, it is, by the court, this 1st day of June, A. D. 1908, ordered that Margaret McGowan, of Cross Molina, Mayo County, Ireland, and John Reddington, of Killala, Mayo County, Ireland, and all others concerned, appear in this court on Tuesday, the 7th day of July, A. D. 1908, and answer the exigencies of said petition. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 23-St

**FIFTH INSERTION.**

Ralston & Siddons, Solicitors

In the Supreme Court of the District of Columbia.  
Patrick O'Toole v. the Unknown Heirs, Devises and Alienees of Henry Stall.  
No. 27,686. Equity Docket 61.

**ORDER OF PUBLICATION.**

The object of this suit is to declare the title to part of original lot numbered seven (7) in square numbered one hundred and forty-four (144) in the city of Washington, District of Columbia, beginning on Nineteenth street 22 feet 10 1/2 inches from the northwest corner of said lot and running thence east 140 feet; thence south 22 feet 10 1/2 inches; thence west 140 feet; and thence north 23 feet 10 1/2 inches to the place of beginning, to be good in fee simple in the complainant by reason of adverse possession thereof for more than forty-eight years. On motion of complainant, it is, this 15th day of April, A. D. 1908, ordered, that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of the date of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and [Seal] Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy.

Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. apr 17, 24, may 16, 22, June 19, 26

**SIXTH INSERTION.**

J. Dawson Williams and B. H. Warner, Jr., Solicitors  
In the Supreme Court of the District of Columbia.  
Jesse B. Rank and George W. Montgomery v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Mejia, Their Unknown Heirs, Alienees, and Devises, if Any or All be Dead. In Equity, No. —.

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession, the title of the complainant, Jesse B. Rank, to sublots 34, and 68 to 88, both inclusive, and the east 6.25 feet of sublot 65 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant, George W. Montgomery, of sublots 35 to 41, both inclusive, and the east 6.25 feet of sublot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants, it is by the court this 8th day of April, 1908, ordered that the above-named defendants cause their appearance to be entered herein on or before the first day occurring after the expiration of three months, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in [Seal] The Washington Law Reporter and The Evening Star newspaper before said day. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk.

april 10, 17; may 16, 22; June 12, 19

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JUNE 26, 1908

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### Proposed Rules of Supreme Court of this District.

The proposed rules of the Supreme Court of the District of Columbia, framed by a committee composed of Mr. W. Mosby Williams, Mr. Wm. Henry White, and Mr. W. W. Millan, received the unanimous approval of the Bar Association of this District at a recent meeting, and the committee were instructed to present the same to the justices of the court for action looking to their adoption and promulgation. The committee have given the matter careful consideration for the past two years, and their report, copies of which were furnished the members of the association and others some weeks ago, shows that the work has been painstaking and thorough. An outline of the rules as proposed was given in our issue of January 31, 1908, and the changes proposed in the present rules have been generally favored by the members of the bar. That this important matter will be carefully considered by the justices of the court can not be doubted, and it is earnestly hoped that prompt action may be had, especially in view of the fact that even after the rules receive the approval of the court some time must elapse, during which the required forms and an index must be prepared and the rules printed, before they will take effect in practice. No revision of the rules has been had since 1898, and the changes since that date have been numerous and important; and an additional reason for desiring a speedy determination by the court as to the rules proposed is that the previous edition of the rules is exhausted.

The duty assigned the committee has been well performed and merits the appreciation of the members of the bar.

### The Land Frauds Trial.

One of the longest trials in the judicial history of this District was brought to a conclusion in Criminal Court No. 1, before Mr. Justice Stafford, during the present week. The case was that of United States v. Hyde, Benson, Dimond, and Schneider, who were charged with conspiracy to defraud the United States of public lands. The trial extended over a period of nearly three months, during which several hundred witnesses were examined, the majority of them being summoned from California and Oregon, the scene of the alleged frauds. The trial resulted in the conviction of Hyde and Schneider upon forty counts of the indictment, and in the acquittal of Benson and Dimond. The case is one of much importance to the Government, as it is stated that it affects the title to thousands of acres of public lands.

### Negligence; Persons Driving Together.

In *Davis v. Chicago, Rock Island, etc., Railroad Company*, decided by the United States Circuit Court of Appeals for the Eighth Circuit (159 Fed., 10), it was held that the fact that the plaintiff at the time of his injury at a railroad crossing was riding in a vehicle with a friend who owned the horse and was driving did not relieve the plaintiff from the duty of exercising ordinary care to avoid injury, and where he sat beside the driver and made no objection when the latter negligently drove upon the track in front of an approaching train, he was negligent as well as the driver. The court said: "It is now the better recognized rule of law that as to such a person situated as was the plaintiff, riding in a vehicle in mere companionship with his friend engaged upon a mutual adventure, it is as much his duty as that of a driver to take observation of dangers and avoid them if practicable by suggestion and protest. In other words, he is required to exercise ordinary care to avoid injury."

### Carriers of Passengers; Delay in Delivering Trunk.

In *Conheim v. Chicago Great Western Railway Company*, the Supreme Court of Minnesota holds that when a trunk is delivered to the baggage man at a railway station in proper season the passenger has the right to require that it shall be carried on the same train which he takes. The proper measure of damages for the failure of a railway company to deliver a traveling man's trunk containing samples is the value of the use of the property during the delay, including such incidental expenses and damages as were in the contemplation of the parties when the contract for carriage was entered into.

## Court of Appeals of the District of Columbia

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

v.

UNITED STATES EX REL. HOWARD C. RUSSELL.

**METROPOLITAN POLICE FORCE; PROMOTIONS; MANDAMUS.**

1. Relator was appointed as a private in the Metropolitan Police Force of this District January 6, 1902; was reduced in salary and made a desk sergeant at his own request on July 13, 1904; was reassigned to the rank of private in class one December 1, 1904, and was promoted to bicycle officer on July 1, 1905. Held, that the date of his original appointment, January 6, 1902, controlled in the application to his case of the provisions of the act of Congress of June 8, 1906, classifying the members of said police force, and providing that "privates who have served under their present appointments more than three years and less than five years shall be included in class two," etc.
2. An order granting a writ of mandamus to compel the enrolment of relator as a private of class two, affirmed.

No. 1858. Decided May 5, 1908.

APPEAL by respondents from a decree of the Supreme Court of the District of Columbia, at Law, No. 49,850, granting a writ of mandamus. Affirmed.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the appellants.

Mr. W. J. LAMBERT, Mr. EDWARD MCLEAN and Mr. R. H. YEATMAN for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District directing a writ of mandamus to issue to the appellants compelling them to enter and enroll the relator Howard C. Russell in class two of the Metropolitan Police Force as of the date of July 1, 1906.

The petitioner alleged his appointment as a private in said police force January 6, 1902, his promotion to the place of desk sergeant on July 13, 1904, his re-transfer to the rank of private in class one on December 1, 1904, and his promotion to place of bicycle officer on July 1, 1905. He claimed that under the provisions of the act approved June 8, 1906, having served for more than three years as a member of the police force and maintained a good record in said service, he became entitled to be enrolled in class two. His application was denied.

The return admits the original appointment as alleged, but avers that the transfer of the petitioner to the position of desk sergeant on July 13, 1904, was a reduction in rank and salary at his own request because of his then physical disability; and that he was again appointed a private in class one on November 26, 1904. The answer further alleges that each change of petitioner's position was by a new order of appointment, and was a new appointment, and that he had not been in the service under his latest appointment for the three years required by the act of June 8, 1906, to entitle him to be advanced to class two. The answer admits the qualification of the petitioner, and bases the action upon the construction of the act.

The Metropolitan Police Force was created by an act approved August 6, 1861, and its members have been increased by later legislation from time to time. The first division into classes one and two of privates was made by the act of March 3, 1879. The act of January 1, 1883, required promotions to positions of captain, lieutenant, and sergeant to be made from the next succeeding rank. The act of 1879 provided that all original appointments of privates shall be made according to such regulations, and after such physical and mental examinations as the Commissioners shall prescribe. The Commissioners were empowered to prescribe the duties of all members of the force.

The act of February 28, 1901, declared that the force should consist of a major and a superintendent, one captain and assistant superintendent, and such captains, lieutenants, sergeants, privates of class two, privates of class one, desk sergeants, and others as Congress may from time to time prescribe. This act was in force when petitioner received his original appointment as a private in class one. The act under which petitioner claims the right of enrolment in class two, is one amending the act of February 28, 1901. This was approved June 8, 1906, and the pertinent parts of the same are the following:

"Paragraph 1. The Metropolitan police district of the District of Columbia shall be coextensive with the District of Columbia, and shall be subdivided into such police districts and precincts as the Commissioners of said District may from time to time direct.

"Paragraph 2. The Commissioners of said District shall appoint to office, assign to such duty or duties as they may prescribe, and promote all officers and members of said Metropolitan Police Force according to such rules and regulations as said Commissioners in their exclusive jurisdiction and judgment may from time to time make, alter, or amend: Provided, that original appointments of privates on said police force at the time this act takes effect shall be classified as follows: Class one. Privates who have served under their present appointments less than three years shall be included in class one, and at the expiration of three years from the date of said appointment shall be promoted to class two, if the conduct and intelligent attention to duty of such privates shall justify such promotion. Class two. Privates who have served under their present appointments more than three years and less than five years shall be included in class two; and after the expiration of five years from the date of said appointment shall be promoted to class three, if the conduct and intelligent attention to duty of such privates shall justify such promotion. Class three. Privates who have served under their present appointment more than five years shall be included in class three. All original appointments of class one to class two in order of appointment to the force after three years' service as privates of class one, and from class two to class three after five years' service as privates of class two, in all cases where the conduct and intelligent attention to duty of any private shall justify such promotion.

"Paragraph 6. The members of the said police force now designated as desk sergeants shall cease to be known as such and shall become privates of class two from and after the date this act is to take effect."

Had the petitioner remained in the position of

desk sergeant until the passage of this act he would have become a member of class two by virtue of paragraph 6.

Having been transferred from that position back to the one of private in class one, the question is whether petitioner's three years' service shall date from the time of his original appointment as a private in class one, or from that of his last transfer or appointment, namely, December 4, 1904.

The first order, made July 13, 1904, reads that petitioner is hereby reduced, at his own request, to the position of desk sergeant. The pay of desk sergeant was less than that of a private in class one by \$60 per year. The second order made November 26, 1904, reads that petitioner, "a desk sergeant in the Metropolitan Police Department, is hereby appointed a private of class one in said department vice Wright removed and pensioned."

The contention on behalf of the appellants is that this is the "present appointment" of the petitioner under the act of 1906, and that his service of three years to entitle him to promotion must date therefrom.

As privates in all of the classes, as well as desk sergeants, were members of the Metropolitan Police Force, we think that the change of duties, which the Commissioners were authorized to make, can not be regarded as new appointments, notwithstanding the form of their several orders. The first assignment changing the duties of the petitioner made a reduction in his salary merely. The next order appointing him as a private of class one was, in fact a reassignment, returning him to the duties first performed. No examination was required in these changes as must be had in the case of all original appointments to the force. The first transfer was, in fact, nothing more than a reduction in the rank of the petitioner, if the difference in salary is to be regarded as establishing a rank, and the second was a restoration of, or a promotion to, the former rank of one who held these several places on the force by virtue of his original appointment as a member thereof. We concur in the views expressed in the following extract from the opinion of Mr. Justice Anderson who heard the case in the court below:

"Congress intended by the act to awaken ambition in the ranks of the Metropolitan Police Force, and thereby better the general service, by providing for advancements—stagnation in the ranks being regarded as detrimental to the service. The scheme of advancement provided to effectuate this end, was simply that in all cases where the conduct and intelligent attention to duty of any private shall justify, he shall, after three years' service as such private, be promoted to class two (class one being the primary class), and that additional service for the specified time should entitle him to be promoted to class three, and the act provided for a classification of the members of the Metropolitan Police Force then serving according to their length of service under their original appointments, provided the same were also their present appointments. Congress simply meant by this, that no present member of the Metropolitan Police Force, who had also been a member of the force previously and *either dropped out or had been dropped out of the force*, should have credit, in the making of the classification, for the period of his service in the force under a former and expired original ap-

pointment. Both the term 'original appointments' and the succeeding and qualifying term, 'present appointments,' were therefore used by Congress advisedly. Any other construction of the act would seem to be unreasonable, and it is impossible to conceive of any other explanation for the use by Congress of both these terms, 'original appointments' and 'present appointments.' If this is not the proper construction of the statute, and that contended for by the respondent is, then the very purpose of the statute could be easily defeated by simply shifting a policeman from one position to another. As is well argued by the petitioner, if Congress had intended the words 'present appointment' to refer to the time of the last promotion or transfer of a private in the artificial form of a new appointment, it certainly would not have provided for the classification of 'original appointments,' and, as already observed, there is no other reasonable explanation for the use of the two terms in the act than that the intention of Congress was that already stated by the court."

We think it unnecessary to add anything further in support of this interpretation of the act of June 8, 1906. The judgment will, therefore, be affirmed. Affirmed.

CHARLES A. LANGLEY ET AL.,  
APPELLANTS,

v.

CECILIA C. D'AUDIGNE.

LANDLORD AND TENANT: REPAIRS TO LEASED PREMISES; MECHANICS' LIENS.

1. An agreement for the lease of certain premises, after reciting the usual covenants, including those to keep the premises in repair, for forfeiture in case of breach of covenants by the lessee, etc., provided that no change should be made in the construction, etc., of the building without the written consent of the lessor, but with such consent the lessee might make improvements and extraordinary repairs, and that if such improvements, etc., during the period of the lease equalled the sum of \$5,000, that sum should be deducted from the amount of rent for said term, not more than \$1,000 to be deducted in any one year, and all improvements, etc., in excess of said sum of \$5,000 to be paid for by the lessee. Held, that the relation created by the agreement was that of lessor and lessee and not of principal and agent.
2. The lessee, immediately upon the execution of the lease, made extensive alterations and improvements to the leased premises, but failed to pay therefor, and during the first year of the term defaulted in paying rent and the performance of other covenants resulting in forfeiture of the lease. The parties furnishing labor and materials in the improvement of the premises filed mechanics' liens against the property, and brought suit to enforce them. Held—
  - (1) That complainants' liens were limited to the interest only of the lessee in the property.
  - (2) That the stipulation for allowance of the \$5,000 for improvements, etc., to be deducted from the rent in sums of \$1,000 yearly, was necessarily dependent upon the continued performance by the lessee of the covenants of the lease.
  - (3) That the liens of complainants, being limited to the interest of the lessee in the property, necessarily fell with the termination of the lease, and the bill to enforce such liens dismissed.

No. 1887.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 22,963, in suit to enforce mechanics' liens. Affirmed.

Mr. A. A. HOEHLING, JR., Mr. C. W. FITTS, Mr. C. C. TUCKER, Mr. J. M. KENYON, and Mr. E. S. BAILEY for the appellants.

Mr. JOHN J. HAMILTON for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The several appellants and others filed suits against the appellee to enforce mechanics' liens against a certain lot and improvements thereon known as the Hotel Barton for labor done and materials furnished in repairing the building under contract with one J. Barton Key, lessee.

These suits were consolidated for trial which resulted in a decree dismissing the several bills. There were some other complainants who did not appeal from the decree, and there was a severance from them by the appellants. The aggregate demand is \$8,220.11, made up of separate claims as follows: Langley, \$3,771.22; Lockhead, \$1,417.86; William H. McCuen & Co., \$1,877.23; William H. McCuen, \$272.55; James Linsky & Son, \$881.25. The evidence in which there is no substantial conflict establishes the following facts:

Appellee was seized in fee of the premises on and before November 1, 1900. She lived in Paris, France. Acting through her brother, Henry May, who was her attorney in fact, she, on November 5, 1900, entered into an agreement with J. Barton Key by which she leased the said hotel property, then known as the "Hotel Wellington," with all furniture therein, to said Key for a term of five years, beginning November 1, 1900. Key agreed to pay rent at the rate of \$7,500 per year, payable in monthly instalments of \$625. The lease contained the covenants usual in leases, for punctual payment, and against assignment. The lessee covenanted to keep the premises and furniture in good repair during the term, and to paint the outside of the house and the roof at least twice during the term. There was the usual covenant for forfeiture of the lease for breach of covenants and for reentry by lessor. There was a covenant on the part of the lessor that in case of performance of all covenants by the lessee, the lessee should have the option of renewal at an annual rental of \$8,000. The fifth clause of the lease which is of importance in this controversy reads as follows:

"Fifth. That no change shall be made in the construction of said building, or in alterations of partitions or stairways without the written consent of the lessor first had and obtained, but the said lessee may, with the written consent of said lessor, make improvements, alterations and extraordinary repairs, and if such improvements, alterations and repairs during the period of this lease equal the sum of five thousand dollars, and are approved by the lessor, the said sum of five thousand dollars will be deducted from the amount of rent paid for said term, it being understood, however, and by this agreement provided, that only one thousand dollars shall be deducted during any one year of said tenancy. All such improvements, repairs and alterations in excess of said five thousand dollars made during the term of said lease shall be made and paid for by the said lessee."

Key soon became involved and on February 5, 1901, on a bill filed by one Scott, who had been advancing money to him and had some interest in the hotel receipts, receivers were appointed to take charge of the premises and conduct the business. Appellee intervened in said proceeding claiming overdue rent. A sale was made of the assets of Key under an order passed April 6, 1901. After sale was made distribution was had of the pro-

ceeds. After paying claims of lien creditors, appellee received the balance, namely, \$935.91, on account of rent then due, amounting to \$3,750. On June 3, 1901, the receivers were ordered to deliver the premises to the owner. The several appellants contracted with Key, on and after November 5, 1900, to furnish certain material and labor in making improvements and repairs on the premises. The accuracy of their several accounts is undenied, and early in February, 1901, they filed liens under the sections of the Code regulating mechanics' liens. The contract of Langley was for what may be called, in the mass, extraordinary repairs, as it provided for making a new entrance, enlarging the lobby, putting in extra stairs, etc. The entire cost, including some extra work, was \$3,771.22, none of which has ever been paid. This was the first contract made. In January, 1901, McCuen & Co. put in extra steam radiators and pipes for heating, and repaired the cooking range. Their contract provided that for the last two payments Key should give notes, due at four and six months respectively, to be indorsed by Scott who was understood to be assisting Key with money. It would seem that the steam pipes and radiators of this work were in the nature of improvements or extraordinary repairs. Key paid \$500 on this contract, leaving about \$2,149.78 unpaid. James Linsky & Son painted and pencilled the front of the building and did other outside and inside painting, at a charge of \$1,281.25, of which \$400 were paid by Key, leaving a balance due of \$881.25. This seems work which Key had specially covenanted to do. Lockhead remodelled the plumbing and put in new closets and bathtubs. This seems to come within the covenant for improvements and extraordinary repairs. Nine hundred and fifty dollars on this account were paid in checks by Scott, leaving a balance of \$1,417.86.

All of the contracts aforesaid were made with Key without procuring the written consent of the owner. One T. B. Huyck was the agent of the owner for the collection of rents. All of the complainants except Lockhead told Huyck of their arrangement with Key. Huyck told several of them that Key was well backed and good, and told all of them but Lockhead that Key had a lease under which he was authorized to make improvements, and that he could be credited therefor on the rent to the extent of \$5,000, at the rate of \$1,000 per year. They did not ask to see the lease. It was not of record, and was apparently in the possession of the owner's attorney.

It appears that the plans for the work afterwards done by Langley had been prepared by an architect for Key; and that on November 21, 1900, Key addressed a letter to Huyck enclosing the architect's statement, and a letter addressed to him authorizing him to make the improvements which he was requested to have Mr. May to sign and return. The letter consenting was never signed or returned, but was produced by defendant's counsel on the hearing and offered in evidence. No inquiry seems ever to have been made about it by Key.

Evidence was offered by the complainants, which was objected to at the time by defendant, showing a lease made by defendant on August 1, 1901, of the premises to the Barton Company for five years at the rate of \$7,500 per year. This contained substantially the same provisions as the former lease to Key, save that no allowance was

made to the lessee for making improvements. It appeared by admission of defendant's counsel that the rent for November, 1900, was not paid but by verbal arrangement between Key and defendant's agent that month's rent was allowed Key on account of the repairs that he was expecting to make, under the provisions of paragraph 5 of the lease, above set forth. This allowance had been made by Huyck.

Before the hearing below the parties entered into a stipulation in which complainants conceded that the limit of their recovery was \$5,000, and, in consideration of the deposit in the Union Trust Company by defendant of the sum of \$7,000, to abide the result of the suit, the liens were transferred from the premises to said fund.

The act of July 2, 1884, providing for mechanic's liens, was in force when these claims accrued, and their enforcement must be regulated thereby. The pertinent sections are the following: "Sec. 1. Every building hereafter erected or repaired by the owner or his agent in the District of Columbia, and the lot or lots of ground of the owner upon which the same is being erected or repaired shall be subject to a lien in favor of the contractor, subcontractor, material man, journeyman, and laborer, respectively, for the payment for the work or materials contracted for or furnished for or about the erection, construction, or repairing of such building, and also for any engine, machinery, or other thing placed in said building or connected therewith so as to be a fixture. . . .

Sec. 4. . . . "When a building shall be erected or repaired by a lessee, or tenant for life or years, or a person having an equitable estate or interest in such building or the land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owner." 23 Stat., 64; Compiled Stat. D. C. (Abert), chap. 45, p. 366.

In determining the question presented by the record, we may assume, without so deciding, that the work done by the appellants under contract with Key was in the nature of the improvements and extraordinary repairs stipulated in clause 5 of the lease, and that the allowance of the first month's rent on that account, and other circumstances, amounted to a waiver of the requirement that written permission therefor should first be had by the lessor.

The agreement between the owner and Key was a lease, not uncommon in form, and can not be considered at all as of the nature of a building contract. The Pennsylvania authorities relied on to convert it into a building contract, and make the lessee the agent of the owner to that extent (*Woodward v. Leiky*, 38 Pa. St., 437, 441; *Fisher v. Rush*, 71 Id., 40, 44, and others), were controlled by a statute of that State. We need not pause to inquire into the points of difference or similarity between that statute and ours, for, if similar, those decisions are in conflict with the interpretation heretofore given to our statute. *Albaugh v. Litho-Marble Co.*, 14 App. D. C., 113, 120: 27 Wash. Law Rep., 130. The relation created by the contract was that of lessor and lessee, and not of principal and agent. Such a contract is rather a negation of the fact of agency than otherwise. *Rothe v. Bellingrath*, 71 Ala., 55, 66; *Albaugh v. Litho-Marble Co.*, supra. In that case the contract was for a lease for ninety-nine years, the lessee agreeing to remove the building from the

lot and erect a new building thereon at a cost of not less than \$75,000, which was to be surrendered to the lessor, her heirs or assigns, at the end of the term without charge to her. Other provisions of the lease do not appear in the record. An attempt made to fasten a mechanic's lien on the lot was denied. It was said by Mr. Justice Norris: "But this covenant involves no theory of agency, but quite the reverse. The parties to the lease dealt with each other not as principal and agent, but practically as adverse parties. To hold that a lessor covenanting with a lessee for the security of his interest under the lease, the payment of rent probably, should construct a building upon the land in place of one to be demolished would thereby and by virtue of such a covenant make the lessee his agent and bind himself personally, as well as his property, for the contracts of the lessee in the performance of the covenant, seems to us to be wholly without warrant in law or reason; and we greatly question whether even the most positive legislation could impose liability upon one person for the obligation of another in such a contingency. Certainly no such liability is imposed, or sought to be imposed by our mechanic's lien law."

The lessee in this case was bound by the rule of the common law, as well as expressly by his covenant, to keep the building in good repair during the term; and the fact that the lessor agreed to permit him, under conditions, to make improvements and extraordinary repairs, for which she would allow him the sum of \$5,000 to be deducted from the rent at the rate of \$1,000 per year, did not alter the relations of the parties as lessor and lessee, or convert the lessee into her agent for that particular purpose. Section 4 of our statute, quoted above, meets the conditions here by expressly limiting the lien made by a lessee or tenant for life or years, to his interest only in the property improved. In Maryland, in a case where the contract was very much like the present one in substance, and under a clause of a statute quite similar to section 4, supra, it was held that the mechanic's lien for material furnished for the erection of buildings under the terms of the lease, attached to the interest of the lessee only. *Hoffman v. McColgan*, 81 Md., 390, 395, and earlier cases cited therein.

It seems quite clear from the facts and circumstances in evidence, that the complainants in this case, in contracting with Key, did not regard him as the agent of the lessor, but as acting for himself and in his own interest. He was apparently solvent and was believed to have the support of Scott, a man with money. In one of the contracts it was expressly stipulated that for the last two payments Scott was to join in the execution of the notes. The aggregate contracts of the parties working on the premises about the same time amounted to far more than the stipulated allowance for improvements in the lease, and they knew this limitation, at least, and that it was payable only by credits on the rent of not more than \$1,000 per year during the term. That they may have regarded the provision of the lease, of which they had heard but did not consider it necessary to examine, as of some slight security may be conceded. And it is true that had Key continued to perform the covenants of his lease, they might, by timely and appropriate proceedings, have subjected the instalments due him as a credit on the



rent, as they accrued. But that stipulation was necessarily dependent upon the continued performance by Key of the covenants of his lease, and his interest terminated with his failure and the consequent forfeiture of his lease. Failing in his attempt to keep the hotel business going, and having ceased to pay any rent at all, there was nothing on which he could have founded a claim for reimbursement by the lessor if he had paid for the improvements as he had contracted with complainants to do. Their right attaching to his interest, as created by the lease contract, could rise no higher than his, and necessarily fell with the termination of the lease. *Rothe v. Bellingrath*, 71 Ala., 55, 60; *Hoffman v. McColgan*, supra.

While it may be true that the value of the property was materially enhanced by the improvements made by Key, those improvements at once became an inseparable part of the realty, and by virtue of an established rule of law reverted therewith to the owner on the failure of the lessee to perform the contract of lease under which he entered; and there were no dealings with, or representations by the owner and lessor that would estop her from the assertion of her right, as against the complainants. There is no recognizable foundation for the assertion of an equitable right, on their behalf, against the owner or her property. With ample opportunity to know just what the rights and interests of Key were, they extended credit to him and took the chances of his ability to pay. Sympathy with them in their disappointment can not justify the transfer of their losses to the owner of the property whose conduct had nothing to do with their occasion.

The decree dismissing the bills was right, and will, therefore, be affirmed with costs.

Affirmed.

JAMES RUDOLPH GARFIELD, SECRETARY  
OF THE INTERIOR, APPELLANT,

v.

THE UNITED STATES OF AMERICA EX REL.  
LUCY ANN TURNER ET AL.

MANDAMUS; DEMURRER TO ANSWER; FACTS ADMITTED;  
ALLEGATIONS ON INFORMATION AND BELIEF;  
FRAUD.

1. Facts alleged in an answer or return upon information and belief are sufficient to raise disputed questions of law and fact; and if such a pleading is sufficient to raise an issue of fact a demurrer thereto will operate as an admission of the facts alleged.
2. The writ of mandamus is not a writ of right, and will issue only in the exercise of the sound discretion of the court. It will not issue where no right is shown to exist nor will it issue to perpetrate a fraud.
3. One seeking the aid of mandamus for the enforcement of his rights must come into court with clean hands.
4. In proceedings by mandamus to compel the restoration of relators to the rolls of the Five Civilized Tribes, where the answer of respondent alleged upon information and belief that relators had fraudulently procured their names to be placed upon the rolls, and that upon a hearing and investigation of which their counsel had notice their names were stricken from the rolls, held that a demurrer to the answer admitted these allegations, and relators were not entitled to relief by mandamus.

No. 1855. Decided May 5, 1908.

APPEAL by respondent from an order of the Supreme Court of the District of Columbia, at Law, No. 49,891, directing a writ of mandamus to issue. Reversed.

Mr. E. T. SANFORD and Mr. WM. R. HARR for the appellant.

Mr. C. H. MERILLAT and Mr. C. J. KEPPLER for the appellees.

Mr. Justice VAN ORSBEL delivered the opinion of the Court:

This is an appeal by the Secretary of the Interior of the United States from an order of the Supreme Court of the District of Columbia directing that a writ of mandamus issue commanding him to restore to the rolls of citizenship of the Creek nation the appellees, relators below.

Relators alleged in their petition that they made application, as provided by law, to the Commissioner to the Five Civilized Tribes, to be enrolled as freedmen members of the Creek nation. A hearing was had, at which all the parties were represented by counsel, and relators were duly adjudged to be entitled to enrolment. No appeal was taken by the Creek nation, and, thereafter, relators' names were placed upon said rolls, which were approved by the Secretary of the Interior on June 16, 1906. It is further alleged that, thereafter, upon false representations, the cases of relators were reopened and that respondent's predecessor in office, without notice to them, arbitrarily and illegally undertook to deprive them of their legal rights by directing that their names be canceled from said rolls. It is alleged that the cancellation of relators' names was not noted on all the freedmen rolls of the Creek nation prior to March 4, 1907.

Respondent answered, denying the jurisdiction of the court to consider the matters referred to in the petition, and denying that relators were freedmen members or citizens of the Creek nation, and alleged, upon information and belief, that Lucy Ann Turner procured the enrolment of herself and her five minor children, the other relators, by fraud and misrepresentation. Respondent then sets forth in detail the facts upon which the allegation of fraud is predicated, and alleges that an investigation was had by the Commissioner, counsel for relators having notice of the hearing, at which several witnesses were examined and evidence adduced showing that relators were not entitled to enrolment. As a result of the hearing, the Commissioner recommended that the names of relators be stricken from the rolls, and the Secretary of the Interior, on February 14, 1907, authorized and directed that the names be canceled from said rolls. It was further alleged that no one of the relators had since been given any allotment or any certificate of allotment; that the action of respondent's predecessor was in accordance with a long established and well recognized practice with respect to the rules of the five civilized tribes. The answer was verified by respondent upon information and belief. A demurrer to the answer was interposed, which was sustained by the court. The court entered a decree ordering the restoration of relators' names to the rolls. From this judgment, respondent prosecutes this appeal.

It is contended by counsel for respondent that the demurrer constituted an admission by relators of the truth of the allegations of fraud contained in the answer, and that, however meritorious their case, they are not here with clean hands and are, therefore, not entitled to the writ. Counsel for relators, on the other hand, insist that since the

allegations of fraud contained in the answer were made upon information and belief, and the answer was so verified the demurrer can not be construed as an admission of the charge of fraud contained therein. A brief consideration of this issue will be sufficient for the purposes of this inquiry. It is well settled that facts alleged in an answer or return upon information and belief are sufficient to raise disputed questions of law and fact. *United States ex rel. Redfield v. Windom*, 137 U. S., 637. It follows, we think, that if such a pleading is sufficient to raise an issue of fact, a demurrer thereto must logically operate as an admission of the facts therein alleged. A demurrer to the answer in an action at law admits all new facts alleged in the answer. In *re Sanford Fork & Tool Co.*, 160 U. S., 247. By "new facts" can be meant only such facts as are well pleaded, material to the issue, and are capable of properly presenting disputed questions of fact.

It, therefore, appears that relators are here admitting that they fraudulently procured their names to be placed upon the rolls and that, upon a hearing and investigation, of which their counsel had notice, their names were stricken from the rolls by an order of respondent's predecessor made prior to March 4, 1907, the date fixed by law for the final completion of the rolls by the Secretary of the Interior. By these admissions, they have divested themselves of every vestige of right to be heard in a court of justice. The machinery of the law may always be set in motion to protect valid property rights, but here no rights exist. Relators admit they are not Creek freedmen, admit they are not entitled to enrolment as such, admit that their names were placed upon the rolls through the perjury of the principal relator, and admit that their names were ordered stricken from the rolls prior to March 4, 1907. Their counsel insist that, unless this writ is granted, there is no court to which they can appeal. Under their admissions, no court would admit them. They are not entitled to a hearing. Hence, it is difficult to understand how they can be damaged by the refusal of the writ.

The writ of mandamus is not a writ of right, and will issue only in the exercise of the sound discretion of the court. It will not issue where no right is shown to exist, nor will it issue to perpetuate a fraud. In *High on Extraordinary Legal Remedies*, sec. 28, it is said: "It is important that a person seeking the aid of a mandamus for the enforcement of his rights should come into court with clean hands; and when the proceedings have been tainted with fraud and corruption the relief will be denied, however meritorious the application may be on other grounds." A similar rule is announced in *Spelling on Injunctions and Extraordinary Remedies*, sec. 1380: "While the remedy by mandamus is not equitable, but strictly legal, yet by analogy to the principles prevailing in courts of equity it is a uniform requirement that the relator in seeking this remedy must come into court with clean hands. If the proceedings have been tainted with fraud, or if the relator has through his neglect lost the benefit of a legal remedy to which he was once entitled, relief will be denied, however meritorious the proceedings may be on other grounds." The principles above announced are supported in *People v. Assessors*, 137 N. Y., 201; *People v. Jeroloman*, 139 N. Y., 14; *Commonwealth v. Henry*, 49 Penn. St., 530;

*State v. Commissioners*, 26 Kan., 419; and *State v. Graves*, 19 Md., 351.

Conceding that the argument of counsel for relator that the Secretary of the Interior had no power to strike these names from the approved rolls is correct, a matter upon which we express no opinion, it is likewise manifest that he had no lawful power, under the admissions of fraud before us, to place the names originally upon the rolls. Hence, we are asked to compel him to perform not only an illegal act, but to now do something he never had power to do. It is elementary that before a writ of mandamus will issue to compel the performance of an act, it must appear that the respondent has power and authority to perform the act sought to be enforced. *Hambleton v. Dexter*, 89 Mo., 188.

Counsel for relators cite the case of *Noble v. Union River Logging Railroad Co.*, 147 U. S., 170, insisting that it supports their position in this case. With this contention we can not agree. In that case, the court restrained the Secretary of the Interior from canceling a map granting to the company a railroad right of way over public lands of the United States. It was held that, when the maps were approved by the Secretary of the Interior he lost further control of them. The suit was brought to restrain him from canceling the maps after they had been approved. He insisted on his right of cancellation on the ground that his original approval had been procured through fraud. The court held that the Secretary of the Interior, having approved the maps, lost control of the matter and, therefore, had no legal authority to cancel them; and a restraining order was issued to prevent him from the threatened performance of an illegal act.

Mr. Justice Brown, in his opinion in this case, clearly expressed the distinction between the case there under consideration and the one at bar when he said: "If he (the Secretary of the Interior) has no power at all to do the act complained of he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do." A court will restrain by injunction the performance of an unlawful act, or command by writ of mandamus the performance of a lawful act; but it will not restrain the performance of a lawful act, or command the performance of an unlawful act. In the case at bar whatever authority, or lack of authority, there may have been for the Secretary of the Interior to act in the premises, he acted; and the enrolment was canceled. If, as contended by counsel, he had lost control of the rolls when the cancellation took place he had no lawful authority to cancel the names from the rolls. For the same reason he would have no higher authority to reinstate the names. Hence the writ here sought is to compel the performance of an unlawful act. On the other hand, if it be conceded that the Secretary had not lost control of the rolls at the time the cancellation took place, it must be held that he was acting in the lawful exercise of his discretion, and the writ can not issue to control his action in the premises.

Viewed from any standpoint the writ in this case, upon the facts before us, should be denied. The judgment is reversed, with costs, and remanded for further proceedings in accordance with this opinion, and it is so ordered.

Reversed.

## Court of Appeals of the District of Columbia.

### THE GARFIELD MEMORIAL HOSPITAL, A CORPORATION, APPELLANT,

v.

HENRY B. F. MACFARLAND ET AL.

#### CONDEMNATION PROCEEDINGS; DISTRICT COURT WITHOUT POWER TO DETERMINE CLAIM OF EXEMPTION FROM ASSESSMENT.

1. The Supreme Court of the District of Columbia, sitting as a District court, in proceedings to condemn land for the extension of a street pursuant to an act of Congress directing the assessment of benefits against the property benefited by such extension, is without power to pass upon a claim by a hospital conducted as a public charity that as such it is entitled to be exempted from such assessment.
2. An order of the District court, overruling exceptions to the verdict of the jury setting up such claim of exemptions, on the ground that the court was without power to pass upon the question of exemptions, affirmed.

No. 1845. Decided June 2, 1908.

APPEAL from a judgment of the Supreme Court of the District of Columbia, holding the District Court, No. 556, ratifying and confirming the verdict of a jury in condemnation proceedings. Affirmed.

Mr. JAMES H. HAYDEN for the appellant.

Mr. E. H. THOMAS and Mr. JAMES F. SMITH for the appellees.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This cause arises from proceedings for the condemnation of land in the city of Washington for the purpose of extending Eleventh street northwest. The case comes here on appeal from the Supreme Court of the District of Columbia, sitting as a District court, ratifying and confirming the verdict of a jury assessing benefits against certain property belonging to appellant and abutting on said street.

The original petition for condemnation was filed by the Commissioners of the District of Columbia on May 31, 1899. A jury was thereafter summoned by order of the court to assess damages. The jury proceeded, under instructions of the court, and, on February 16, 1900, filed its verdict. The verdict was finally ratified in so far as it related to damages awarded, but vacated in so far as it related to the assessments for benefits. On appeal to this court, the order was reversed in so far as it affected the assessments of benefits. The Commissioners then moved the court to confirm the assessments of benefits, but the court, after hearing exceptions filed by the owners of the land assessed, denied the motion.

Congress, by an act approved June 6, 1900, authorized and directed the Commissioners, in case the assessment for benefits should be declared void, to apply to the court below for a reassessment of the same. On June 17, 1904, the court ordered the Commissioners to proceed in conformity with that act. The Commissioners accordingly filed a petition praying the court to cause public notice thereof to be given, and to appoint a jury "to re-assess such amount of the amount heretofore found to be due and awarded as damages for and in respect of the land con-

demned for the extension of Eleventh street . . . as benefits, and to the extent of such benefits, against those pieces or parcels of land which have been benefited by the extension of said Eleventh street." On November 28, 1904, the court made an order directing that public notice be given as prayed for, and directed the marshal to summon a jury. Publication of notice was made, and a jury summoned, in conformity with this order. On June 6, 1906, the jury filed its verdict. Among other assessments of benefits, the jury found "against Garfield Hospital, with a frontage of 562.48 feet on Eleventh street to a depth of 200 feet, \$6,700." Within the time provided by statute after the filing of this verdict, the appellant filed exceptions to it, showing, among other things: "(1) The verdict and assessment sought to be imposed were unjust because the said hospital being an institution of purely public charity, conducted without charge to inmates, profits, or income, its property was by law exempt from taxation. (2) The verdict and assessment were unjust because all of the land owned by the said hospital abutting on Eleventh street extended, was purchased for it by the United States pursuant to the act of Congress, approved June 28, 1902, entitled 'An act making appropriations for sundry civil expenses of the government for the fiscal year, ending June thirtieth, nineteen hundred and three' (32 Stat. L., 467), and by the terms of the said act the said hospital was relieved from the assessment sought to be imposed upon the said land and the said assessment was made a charge upon the District of Columbia. (3) That the assessment sought to be levied against the said hospital was excessive and unreasonable for that it did not own the land in question in fee simple, and its right or title with respect thereto was limited by law to the use of the said land for hospital purposes, without the right to participate in the proceeds of any sale or lease thereof, or otherwise to benefit by any enhancement in the value of the same." Thereafter, the Commissioners moved the court to finally ratify and confirm the verdict and assessment. On hearing, the motion was granted, and the exceptions overruled. From the order of the court granting the motion and overruling the exceptions this appeal is prosecuted.

The exceptions to the verdict set forth numerous objections, and the assignments of error are comprehensive enough to bring up all the exceptions, but counsel for appellant has discussed but three points in his brief. Hence; all other questions raised by the exceptions and preserved by the assignments of error, will be deemed to have been waived.

It is insisted that, under the general law of the District of Columbia, the land in question is exempt from taxation or assessment of any sort. Section 7, chapter 65, Compiled Statutes, D. C., provides: "The property exempt from taxation under this act shall be the following and no other, namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity, conducted without charge to the inmates, profit or income."

The second contention of appellant is to the effect that it was specially exempted from liability for this assessment by the act of Congress pro-

viding for the purchase of the land in question from the heirs of one M. H. Schneider. The act (23 Stats. L., 419-467) provided: "For the purchase of lands belonging to the heirs of M. H. Schneider, adjoining the present Garfield Memorial Hospital land on the west from Boundary street back to Clifton street in Washington, District of Columbia, containing about sixty-seven thousand square feet; fifty thousand dollars to be expended under the direction of the Commissioners of the District of Columbia. One half of which shall be paid from the revenues of the District of Columbia and the other half from the Treasury of the United States. Provided, That the land shall be graded by the present owners to an elevation satisfactory to the trustees of the above hospital, and provided further that the District of Columbia assume all special assessments pending against said lands of the heirs of M. H. Schneider."

It is insisted in the third place, that the title to the land in question is in the United States, and not in the appellant; that, should appellant cease to use it for hospital purposes, it would immediately revert to the United States; and that, being the property of the general government, it is exempt from this assessment.

At this point, we are confronted with a question of jurisdiction. It is contended by counsel for appellee that the Supreme Court of the District of Columbia, sitting as a District Court, under the act of Congress providing for the imposition of these assessments (31 Stats. L., 665), had no power to decide questions relating to exemptions. This was the view taken by the court below. The learned justice, in his opinion, said: "The statute directs the jury to assess the benefits on the pieces or parcels of land benefited by such extension, and the amount of the assessment for such benefits against the same; and the court has power to hear and determine objections filed to the verdict and award, and to set aside or vacate the same, in whole or in part, when satisfied that it is unjust or unreasonable; but there seems to be no jurisdiction given the District court thereby to say what lands, if any, are exempt; and no discretion appears to be given to the jury to leave out of their consideration any lands because the title to the same may be in a hospital, or even in the municipal government, or in any church society, or other institution which might be exempt from taxation. If the hospital is exempt, or if the District Commissioners, under the tenure by which the hospital holds the said lands, are obliged to assume the assessment, then that question can be disposed of after confirmation of the verdict; and, therefore, without deciding whether the hospital is required to pay these assessments, or is exempt from them, I am constrained to overrule the exceptions and to confirm the award, notwithstanding the argument of counsel in behalf of the hospital."

With this conclusion we agree. The trial court, sitting as a District court, was limited in its jurisdiction to the consideration of only such matters as were before it under the express terms of the statute. We are of the opinion that the power to pass upon the question of exemptions was not conferred by the statute. It may be suggested that any attempt to enforce this assessment may be met by the appellant in a way which will necessitate the consideration of these matters. How-

ever, they are not properly before us at this time. The judgment is affirmed, with costs, and it is so ordered.

Affirmed.

JESSIE E. THOMPSON, APPELLANT,

v.

CHARLES N. THOMPSON,

HUSBAND AND WIFE; WIFE MAY NOT SUE HUSBAND  
FOR PERSONAL TORT.

In this District a wife may not sue her husband for a personal tort committed by him during coverture, no such power being conferred by section 1155 of the Code.

No. 1875. Decided June 9, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,145, entered upon a demurrer to the declaration in an action by a wife against her husband for assault. Affirmed.

Mr. W. M. LEWIN for the appellant.

Mr. A. E. L. LECKIE, Mr. C. M. FULTON, and Mr. J. W. COX for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an action for damages for assault and battery, and is brought by a wife against her husband. The declaration is in seven counts and avers as many separate assaults. The defendant pleaded the marriage relation; the plaintiff demurred; the demurrer was overruled, and judgment was thereupon entered for the defendant.

The sole question involved is whether a wife may sue her husband for a personal tort committed during coverture. Owing to her disabilities under the common law the plaintiff is compelled to rely upon section 1155 of the Code of the District of Columbia. That section is entitled "Power of Wife to Trade and to Sue and be Sued," and permits married women to engage in any business and to make contracts whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property "and for torts committed against them as fully and freely as if they were unmarried." The section also permits suits against married women upon their contracts, whether made before or during marriage, "and for wrongs independent of contract committed by them before or during marriage, as fully as if they were unmarried." It is further provided that a husband shall not be liable for any tort committed separately by his wife out of his presence without his participation or sanction.

In *Bronson v. Brady*, 28 App. D. C., 250: 34 Wash. Law Rep., 704, we held that under the provisions of the Code a married woman might contract with her husband. The question here raised was not involved, and there is nothing in the opinion in that case which tends to elucidate it. It is true, as there stated, that a great change has taken place in the status of married women, and that they have been emancipated from much of the harshness of the common law. It is also true that an examination of the statutory enactments of the different States in favor of married women will disclose that the object and purpose of such legislation has been to further and promote the

property rights and interests of married women, but not to interfere with or undermine the conjugal relations. No statute has been pointed out to us, and we have found none expressly conferring upon a wife authority to bring a suit against her husband for a personal tort. Only one decision, and that was reversed on appeal, has been brought to our attention which authorized such a suit.

In *Freethy v. Freethy*, 42 Barb. (N. Y.), 641, it was held that the language of section 3 of the statute of 1862 of that State, which provided that "any married woman may bring and maintain an action in her own name, for damages, against any person or body corporate for any injuries to her person or character, the same as if she were sole," did not give a wife the right to maintain an action against her husband for slander. The court said: "When the legislature intends to make such a striking innovation of the rules of the common law and so much opposed to public policy, and the peace and happiness of the conjugal relation, as would be the case if husband and wife were permitted to sue each other for alleged wrongs to character, it should use language as will make it clearly manifest, and not leave it to the construction of the courts."

In *Longendyke v. Longendyke*, 44 Barb. (N. Y.), 366, it was held that the above statute did not authorize a married woman to maintain against her husband an action for assault and battery. The court said: "The right to sue her husband in an action of assault and battery may perhaps be covered under the literal language of this section, but I think such was not the meaning and intent of the legislature."

In *Schultz v. Schultz*, 63 How. Pr. (N. Y.), 181, it was held by a divided court that the statute above referred to authorized an action by a wife against her husband for assault and battery. This case, however, was reversed by the Court of Appeal (89 N. Y., 644).

In *Abbott v. Abbott*, 67 Me., 304, the question was before the court whether a wife after being divorced from her husband could maintain an action against him for an assault committed by him during coverture, and it was held that she could not, notwithstanding a statute similar to ours. The court said: "It would be against policy for the law to grant the remedy asked for in this case. . . . If an assault was actionable, then would slander and libel and other torts be. . . . The private matters of the whole period of married existence might be exposed besides." See, also, *Main v. Main*, 46 Ill., 106.

When the District Code was enacted it was known to Congress that similar statutes had been held by various courts of last resort not to give married women the right to sue their husbands for personal torts committed during coverture.

It was also well known that to confer such a right would be radically to depart from the rule of the common law. It is, therefore, reasonable to believe that had Congress intended such a result, it would have employed language so clear and comprehensive as to leave no room for doubt or conjecture. If we hold that such an action may be brought by a wife against her husband, we must also hold that he may maintain a similar action against her, for the statute says that she may be sued for wrongs independent of contract committed during marriage as if unmarried. In

our desire to accord to woman every right to which she is entitled, let us not undermine the basis of society by disregarding the sanctity of the home. Let us not furnish grist for the divorce courts. Litigation of this character between husband and wife is vicious in principle and contrary to sound public policy, and we believe not authorized by the Code.

Our conclusion is necessarily based upon the proposition that the parties to this action are one in law. We, therefore, award no costs. *Abbe v. Abbe*, 48 N. Y. Sup., 25.

The judgment will be affirmed, and it is so ordered.

Affirmed.

**Spring Gun.**—Defendant so arranged a gun within his trunk that his landlady, inspired with curiosity, opening it, was killed by its discharge. Defendant was convicted of murder in the second degree; but, because of some legal technicality in the selection of the jury, his conviction was reversed. However, the Washington Supreme Court, in *State v. Marfaudille*, 92 Pacific Reporter, 939, remarked that a warning by accused to decedent would be no defense, unless her act was with intention to cause self-destruction, nor would a lack of intent to kill the particular person who fell a victim be any excuse.

**Judicial Paternalism.**—The trial judge had refused a new trial, saying that he thought that another jury might give even heavier damages. The New York Supreme Court, in *Rogers v. Macbeth*, 108 New York Supplement, 74, stamped the decision of the trial court as "paternalism foreign to judicial function," and said: "If the defendant chose to hazard another trial it was not for the court to seek to save him from himself by withholding from him that which the court thought he was entitled to receive."

**Compelling Answers to Questions of Interstate Commerce Commission.**—In the interrogation of Mr. Harriman during an investigation by the Commerce Commission, he refused to answer the questions asked him concerning his operations. In *Interstate Commerce Commission v. Harriman et al.*, 157 Federal Reporter, 432, it was contended that Congress had no power to make such investigation or to delegate any such power to the Commission. The United States Circuit Court held that respondents should be compelled to answer the questions propounded, saying "No person or company can engage in any commercial occupation without capital, and the management and investment thereof is as much a commercial instrumentality as is a locomotive or an engineer, and that the power of Congress extends over all instrumentalities of commerce is no longer doubtful. To me it seems clear that financial regulation of corporations engaged in interstate commerce is a regulation of that commerce by regulating its most potent instrumentality."

**Bank—Insolvency.**—The liability of a depositor to whom an insolvent bank has paid a check in the usual course of business is denied in *McGregor v. Battle*, 128 Ga., 577, 58 S. E. 28, 13 L. R. A. (N. S.), 185, where the depositor had no notice of the bank's insolvency.

**Legitimization of Bastards.**—A man abandoned his wife and children in New York, married again without obtaining a divorce, eventually moved to Michigan, instituted divorce proceedings against his lawful wife by publication, notice of which she did not receive, was thereupon awarded a decree of divorce, and remarried the second wife, by whom he had had two children. The remainder of an estate of which the father had been life tenant was to vest in his "lawful issue." By the Michigan law the intermarriage of parents legitimizes their offspring. The New York Court of Appeals in *Olmsted v. Olmsted*, 83 North-eastern Reporter, 569, held that, as the Michigan court had never acquired jurisdiction of the person of the first wife, its decree of divorce was not a judgment which it was bound to respect, and that the subsequent marriage was invalid, and did not legitimize the issue of the second wife.

**Bill of Lading—Forgery.**—Where one pays a draft drawn upon him with his authorization, and in the belief that a forged bill of lading attached thereto is genuine, it is held, in *Varney v. Monroe Nat. Bank*, 119 La., 943, 44 So., 753, 13 L. R. A. (N. S.), 337, that he must bear the loss, and is not entitled to recover the amount of the draft from a bank which discounts it and then forwards it for collection.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

W. L. Pollard and M. N. Richardson, Solicitors

In the Supreme Court of the District of Columbia,  
Holding an Equity Court for Said District.

George A. Scott, Complainant, v. Henry Schroeder et al., Defendants.  
Equity No. 27,627.

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18th street by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in liber 829, folio 69, et seq., of the land records of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof, for more than twenty-two years. On motion of the complainant, it is this 22d day of June, A. D. 1908, ordered that the defendant, Henry Schroeder, if living, or if dead, the unknown heirs, alienees, and devisees, if any, of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 26-8t

#### Legal Notices.

John J. Hemphill, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James A. Bates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1908. HENRY C. BATES, 20th st. and Fifth ave. New York City, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,808. Admin. [Seal] 26-8t

Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Margaret Nugent, Deceased.  
No. 15,324. Administration Docket 88.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by P. J. O'Connell, it is ordered this 19th day of June, A. D. 1908, that Patrick Nugent and the unknown heirs at law and next of kin of Margaret Nugent, deceased, and all others concerned, appear in said court on Monday, the 27th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: WM. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-8t

Goldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel Becker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK A. FENNING, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,851. Administration. [Seal.] 26-8t

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Boegeholz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK W. BERGMAN, Suitland, Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,339. Administration. [Seal.] 26-8t

Berry & Minor, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jane L. Stone Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of June, 1908. BENJAMIN S. MINOR, Colorado Building; HORACE B. STANTON, 608 State st., Boston, Mass. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,248. Administration. [Seal.] 26-8t



## Legal Notices.

Hugh T. Taggart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Michael McKenna, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1908. JOHN C. O'DONNOGHUE, by Hugh T. Taggart, Attorney. Attest: W. M. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,341. Administration. [Seal.] 25-St

Thomas Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Rebecca S. Nichols, Deceased.

No. 15,291. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Louise S. Nichols, it is ordered this 25th day of June, A. D. 1908, that John H. Nichols, Howard E. Nichols, Clarence H. Nichols, Effie J. Curry, Lula Fernandez, Franklin O. Nichols, Hugh H. Nichols, Bernard Nichols, Carroll Nichols, Ernest Nichols, Rudolph Nichols, Mary Nichols, Mrs. Mary Nichols, and all others concerned, appear in said court on Tuesday, the 28th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

James F. Bundy, Solicitor  
In the Supreme Court of the District of Columbia.  
Susie A. Taylor v. William Thornton Taylor and Kate M. Myers, Otherwise Called Kate M. Taylor.  
No. 27,740. Equity Doc. 61.

The object of this suit is to obtain an absolute divorce in favor of said Susie A. Taylor from her husband, said William Thornton Taylor, on the ground of adultery, the said Kate M. Myers, otherwise called Kate M. Taylor, being named as co-respondent. On motion of the complainant, it is, this 26th day of June, 1908, ordered that the defendants, William Thornton Taylor and Kate M. Myers, otherwise called Kate M. Taylor, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk, 25-St

## SECOND INSERTION.

John C. Heald, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Nicholas Drummond, Deceased.  
No. 15,286. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary Ann Murray, it is, this 19th day of June, 1908, ordered that Thomas J. Murray and Mary Bane, and all others concerned, appear in said court on Tuesday, the 21st day of July, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

## Legal Notices.

Geo. Francis Williams, Solicitor

In the Supreme Court of the District of Columbia.  
Anna Marie Roche, a Minor, by Burr N. Edwards, Her Guardian; Catharine A. Roche, Widow, v. Catharine Honora Roche, an Infant. No. 47,317. In Equity.

George Francis Williams, trustee in the above-entitled cause, having reported that he has sold all of the real estate involved therein, namely, part of original lot twenty-five (25) in square five hundred and fifteen (515), situate in the city of Washington, in the District of Columbia, and known as premises 1086 Fourth street northwest, unto Gelsomino Cerrone, for the sum of two thousand two hundred and ten dollars (\$2,210), it is, this 12th day of June, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 13th day of July, 1908. Provided this order be published once a week for three successive weeks before said last-mentioned day, in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

Milton Strasburger and W. M. Williams, Solicitors

In the Supreme Court of the District of Columbia.  
Julian F. Scott et al. v. Corinne L. Scott et al.  
Equity, No. 28,824.

Milton Strasburger and W. Mosby Williams, trustees, having reported an offer from John F. Allwine of one hundred dollars cash for the north 20 feet front on 12th street by the full depth that width of lot one in square 984, and from Henry A. Herrell and John F. O'Neill of one hundred dollars cash for lot six in square 1107, as set forth in their report filed in this cause, it is, this 12th day of June, 1908, ordered that said trustees be and they are hereby authorized and directed to accept said offers, and that the sale of said property to said parties respectively will be ratified and confirmed on the 13th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of the three successive issues of The Washington Law Reporter published prior to the last mentioned day. By the Court: HARRY M. CLABAUGH, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

[Seal] lished prior to the last mentioned day. By the Court: HARRY M. CLABAUGH, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary L. Town, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908 EDNA D. T. NEWTON, care of Blair & Thom, Colorado Building. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,330. Admn. [Seal.] 25-St

Wm. E. Ambrose, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Ann M. Frain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. HENRY W. TILPITT, 1417 E st. S. E., D. C. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,168. Admn. [Seal.] 25-St

New corporations can procure from the Law Reporter Printing Company, 518 1/2 street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

**R. R. Horner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Broadus, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **PERRY H. CARSON**, 934 3d st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,833. Administration. [Seal.] 25-3t

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Bratton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **GEORGE C. GLICK**, 1508 E st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,372. Administration. [Seal.] 25-3t

**Armond W. Scott, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie E. Smyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1908. **CLARA H. SMYTHE**, 908 N. 29th st., Richmond, Va. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,327. Administration. [Seal.] 25-3t

**F. Edward Mitchell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Allen Sawtell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. **ANDREW NOLTE**, 19 Eye st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,848. Administration. [Seal.] 25-3t

**Wilton J. Lambert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William T. Solomon, Deceased.**  
**No. 12,038. Administration Docket—**

Application having been made herein for re-probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William H. Underdue. It is ordered this 16th day of June, A. D. 1908, that Nicodemus Solomon and Josephine Solomon, and all others concerned, appear in said court on Thursday, the 23d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

**Legal Notices.**

**Carlisle & Luckett, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah J. Obold, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. **ANNIE C. TUOHY**, 1718 18th st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,338. Administration. [Seal.] 25-3t

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert F. Costello, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. **MINNIE E. COSTELLO**, 45 H st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,814. Administration. [Seal.] 25-3t

**Lester & Price, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Anton Remy, Deceased.**  
**No. 15,248. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Elizabeth Remy, it is ordered this 12th day of June, A. D. 1908, that Katherine McKay and Sophronia Limmer, and all others concerned, appear in said court on Tuesday the 21st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

**THIRD INSERTION**

**H. W. Bohon, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **PETER C. J. TREANOR**, 323 Penna. ave. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,399. Administration. [Seal.] 24-3t

**Cole & Donaldson, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Emma P. Cook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 11th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of June, 1908. **R. GOLDEN DONALDSON**, 611 14th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,238. Administration. [Seal.] 24-3t

**Legal Notices.**

**Malcolm Hufty, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**In the Matter of Rezin W. Darby, Bankrupt.**  
 Bankruptcy No. 448.

Joseph L. Crupper, trustee, having reported to the court that he has sold at public auction to himself, the said Joseph L. Crupper, the real estate described in said report and being those two certain tracts of land lying and being in Arlington District, Alexandria County, and partly in Fairfax County, Virginia, and being the same property conveyed to Rezin W. Darby by two certain deeds from Ellen J. McElheney, recorded in the county clerk's office of Alexandria County, Virginia, in liber W No. 4, page 309, and liber Z No. 4, page 147, respectively, less about 5 acres, 3 rods and 39 poles of land sold off the above property by deed from Rezin W. Darby to Rufus H. Darby recorded in said clerk's office in liber W No. 4, page 428, leaving about 16½ acres of land, for the sum of \$7,600 cash, it is, by the court this 10th day of June, 1908, ordered that said sale be, and the same hereby is, ratified and confirmed unless cause to the contrary be shown on or before the 10th day of July, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter and The Washington Times and a copy of said report and this order be mailed to each of the scheduled creditors of said bankrupt at least 10 days before said date. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer Asst. Clerk. 24-31

**Wolf & Rosenberg, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Willard F. Hallam, Plaintiff, v. John P. Carrothers,**  
**Defendant. At Law, No. 50,336.**

The object of this suit is to recover from the defendant the sum of thirty-five hundred dollars (\$3,500), with interest and costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 10th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-31

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Ellen D. Lane, Deceased.**  
 No. 15,291. Administration Docket 1-1.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by The American Security and Trust Company, the executor named in the said will, it is ordered, this 10th day of June, A. D. 1908, that Duncan Church, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-31

**W. W. Wicker and J. C. Heald, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Durham W. Stevens, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. KATHERINE D. STEVENS, 49 Brady St., Detroit, Mich. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,303. Administration. [Seal.] 24-31

**Legal Notices.**

**Sheehy & Sheehy, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John T. Lewis, Deceased.**  
 No. 14,577. Administration Docket 37.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by A. Jackson Taylor, it is ordered this 10th day of June, A. D. 1908, that Oliver Lewis, W. Wesley Lewis, Georgianna Barnes, Elizabeth Middleton, Sarah Shreeves, Mary E. Lewis, James Lewis, Jefferson Lewis, Sybil Willet, Hilda Hinmon, William Lewis, John Harvey Lewis, Mary Richardson, Jennie Richardson, John Willet, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-41

**W. H. Robeson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of James Smith, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of June, 1908. SAM'L A. PUTMAN, by W. H. Robeson, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 11,789. Administration [Seal.] 24-31

**John C. Heald, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ephraim S. Randall, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of June, 1908. LOUISA R. RANDALL, 1353 Wallace Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,311. Administration. [Seal.] 24-31

**Bradley & Bradley, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Charles B. Knight, Plaintiff, v. Henry Butterfield, Defendant. At Law, No. 49,548.**

The object of this suit is to recover a debt of one thousand two hundred and seventeen and three one-hundredths (\$1,217.03) dollars with interest thereon from the 4th day of May, A. D. 1907, together with all costs, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 8th day of June, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 24-31

**Legal Notices.**

**Charles J. Murphy, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **James K. Jones**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **9th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of June, 1908. **JAMES K. JONES, JR.**, 621 Colorado Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,828. Administration. [Seal.] 24-3t

**Howard Boyd, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Hermann H. Goetz**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **Mrs. JENNIE L. GOETZ**, Colonial Beach, Va. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,048. Administration. [Seal.] 24-3t

**R. F. Downing and G. A. Berry, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John Sexton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **5th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 5th day of June, 1908. **FRANK SEXTON**, 1227 F st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,274. Administration. [Seal.] 24-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Harriet H. Davison**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **MARY C. DE GRAFFENRIED**, 1935 17th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,305. Administration. [Seal.] 24-3t

**Julius I. Peyser and Wolf & Rosenberg, Attorneys**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Louis Spanier**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **8th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of June, 1908. **LEAH LOEH**, 1340 Columbia Road; **SARAH FRIEDLANDER**, 914 Mass. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,317. Administration. [Seal.] 24-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Clara Smith Coffin**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **EUGENE COFFIN**, Fort Sam Houston, Texas. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,318. Administration. [Seal.] 24-3t

**Wm. H. White, Attorney**

**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Rosetta Prather**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **WILLIAM HENRY WHITE**, 416 5th st. N. W., Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,315. Admn. [Seal.] 24-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. l. a. on the estate of **Mary E. Gulick**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of May, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,223. Administration. [Seal.] 24-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles E. Wood**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **28th day of May, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,162. Administration. [Seal.] 24-3t

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
 Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Philip E. Gerry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **4th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of June, 1908. **MARGARITA S. GERRY**, 2944 Macomb st., Cleveland Park. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,293. Administration. [Seal.] 24-3t

**Legal Notices.**

William D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Charles C. Casey, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 3d day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 10th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by William D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,389. Administration. [Seal.] 24-St

Geo. Francis Williams, Attorney

In the Supreme Court of the District of Columbia.  
Theodore S. Clark et al., Executors, v. William A. Gordon, Trustee, et al. No. 27,638. Equity Docket 61.

The object of this suit is to declare the complainants to be entitled to payment of a certain note secured by deed of trust belonging to the estate of their testator, Louis Clark, Jr., out of a fund in the hands of said defendant Gordon, trustee, and for an accounting by said trustee, and requiring the defendant, Morris Clark, to perfect their title to said note by endorsing the same, he being the payee therein named. On motion of the plaintiff, it is this 11th day of June, A. D. 1908, ordered that the defendants, Morris Clark, Marcus A. Meyers, and Adolph Horowitz, trustee, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. By

[Seal] the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 24-St

E. L. White, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration c. t. a. on the estate of J. Hubley Ashton, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Tuesday, the 30th day of June, 1908, at 10 o'clock A. M., as the time and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 11th day of June, 1908. ELIZABETH ASHTON WILSON, Administratrix c. t. a., by E. L. White, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,428. Administration. [Seal.] 24-St

Thomas Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of George Grice, Deceased.  
No. 15,258. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by David Jones, it is ordered this 11th day of June, A. D. 1908, that Julius L. Grice and Josephine Smith, and all others concerned appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. HARRY M. CLABAUGH, Chief Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-St

**Legal Notices.**

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Worthington Dorsey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by George Howard, Treasurer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,816. Administration. [Seal.] 24-St

**FOURTH INSERTION.**

E. A. Jones and G. C. Shinn, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devisees, and Allenees of such of them as are dead; and the Unknown Heirs, Devisees, and Allenees of Julianna Barry, Deceased.

In Equity, No. 27,648.  
ORDER OF PUBLICATION.

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and allenees of such of them as are dead; and the unknown heirs, devisees, and allenees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 23; June 19, 26; July 24, 31.

**SIXTH INSERTION.**

Ralston and Siddons, Solicitors  
In the Supreme Court of the District of Columbia.  
Patrick O'Toole v. the Unknown Heirs, Devisees and Allenees of Henry Stall.  
No. 27,638. Equity Docket 61.

ORDER OF PUBLICATION.  
The object of this suit is to declare the title to part of original lot numbered seven (7) in square numbered one hundred and forty-four (144) in the city of Washington, District of Columbia, beginning on Nineteenth street 22 feet 1 1/4 inches from the northwest corner of said lot and running thence east 140 feet; thence south 22 feet 10 1/4 inches; thence west 140 feet; and thence north 22 feet 10 1/4 inches to the place of beginning, to be good in fee simple in the complainant by reason of adverse possession thereof for more than forty-eight years. On motion of complainant, it is, this 13th day of April, A. D. 1908, ordered, that the defendants cause their appearance to be entered herein on or before the first rule day occurring three months after the expiration of the date of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and [Seal] Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: John R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. apr 17, 24, may 15, 22, June 19, 26

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JULY 3, 1908

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**Landlord and Tenant; Forfeiture of Lease; Sale by  
Trustee in Bankruptcy.**

In *Gazley v. Williams*, decided recently by the Supreme Court of the United States, it appeared that a lease contained a condition imposing a forfeiture if the lessee assigned the lease or if his interest should be sold under execution or other legal process without the written consent of the lessor. The lessee became insolvent and at the suit of the lessors receivers were appointed, who made sale of the property of the lessee, including the leasehold, to one Brown. Brown entered into possession and paid rent from time to time, meanwhile making extensive improvements. Subsequently he was adjudicated a bankrupt, and the trustee in bankruptcy made application to the court for a sale of the said leasehold estate. The lessor resisted the application, but the referee ruled that the lessor had no right, as against the trustee in bankruptcy, to forfeit the lease in the event of a sale by him under the court's order, and directed a sale of the leasehold by the trustee free from any claim or right on the part of the lessor to forfeit the same. The Supreme Court, in an opinion by Chief Justice Fuller, holds that a sale by the trustee in bankruptcy, under such circumstances, was not a breach of the condition of the lease, and affirms the judgment.

## Service by Publication; Wrong Initial.

In the case of *D'Autremont v. Anderson Iron Company*, recently decided by the Supreme Court of Minnesota, it is held that though the failure to insert the middle initial of the defendant's name in a summons where service is made by publication may not be fatal error, the use of a wrong initial will not confer jurisdiction over the real party defendant. In the case before the court the publication of a summons to George H. Leslie was held not to confer jurisdiction over George W. Leslie. The court said on this point: "Where as in this case there is an attempt to give the full name of the defendant, and a wrong initial is used, it must, in view of the very common practice of identifying individuals by adding their middle name, be held that the error is misleading and likely to result in prejudice to those who may perchance notice the same as published in the newspaper. It would be straining the rule requiring a strict observance of the statute permitting service of process in this manner to hold an error so likely to mislead and prejudice an irregularity only."

## Practice; Motion by Both Parties to Direct Verdict; Subsequent Special Requests.

In *Empire State Cattle Company v. Atchison, etc., Railway Company*, recently decided, it is held that the request by both parties for peremptory instructions in their favor does not amount to a submission of the facts to the court, so as to exclude the right of the plaintiffs to have the case go to the jury in accordance with subsequent special requests asked on their behalf. The review by an appellate court of the action of the trial court in giving a peremptory instruction in favor of the defendant after denying plaintiffs' request for a peremptory instruction in their favor, and their subsequent special requests, is held not confined to determining whether there was any support in the evidence for the inferences drawn by the trial court, but extends to determining whether the special instructions asked were rightly refused either because of their inherent unsoundness, or because, in any event, the evidence was not such as would have justified the court in submitting the case to the jury.

It is held, however, that a peremptory instruction is properly given on behalf of the defendant carrier in an action against it to recover for a loss to a shipment of cattle, alleged to have been occasioned by its negligence, where the undisputed evidence is of such a character as would make it the duty of the court to set aside the verdict if the case had been given to the jury and the verdict rendered in favor of the plaintiffs.



## Court of Appeals of the District of Columbia.

MARGARET E. TAYLOR

v.

MARY J. LEESNITZER.

## APPEALS; PARTIES.

1. Where, in a suit for partition, the interests of complainant and one of two defendants are identical, and a decree is passed in which the interests of both are protected, both are necessary parties to an appeal by another defendant whose claim is antagonistic to the interests of both the complainant and such defendant; and the failure to join such defendant as a party appellee will be ground for dismissing the appeal.
2. And in such case, the appellant will not be allowed to file an additional supersedeas bond and to have a citation to bring in the party improperly omitted.

No. 1808. Decided June 9, 1908.

HEARING on motion to set aside decree dismissing appeal, etc. Denied.

Mr. J. J. DARLINGTON and Mr. J. NOTA MCGILL for the motion.

Mr. EDMUND BURKE opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellant has filed a motion to set aside the decree dismissing her appeal, and for a hearing on the merits, or else modifying the same so that she be permitted to correct her record by citing the omitted parties, or giving an additional bond.

This is not a case of a judgment or decree against two or more defendants whose interests are inseparably involved, in which case to authorize an appeal by one alone there must be a summons and severance. The interests of complainant and the defendant Padgett were the same, and the latter was made a party defendant for the purpose of obtaining partition of the lands claimed by her and complainant as tenants in common. Her interests were antagonistic to those of the chief defendant, and identical with those of the complainant. She was a necessary party to the suit and, so far as defendant Taylor was concerned in the subject-matter of the controversy, occupied the attitude of the complainant. In equity, parties, one in interest, may be arrayed as plaintiffs and defendants, nominally, but their true relations are taken into consideration throughout the entire proceeding. Having admitted the allegations of the bill and thereby arrayed herself in interest with the plaintiff and against the other defendant, the decree gave her all that she could expect. She had nothing that she could appeal from and it was not necessary that defendant Taylor should obtain a severance from her in order to prosecute an appeal. That appeal, to be effective, must be against her as well as against the complainant. The decree running in favor of both, and being inseparable, it is not perceived how it could be reversed as to the one and not as to the other, or how the question involved could be adjudicated in the case of one without seriously affecting the interests of the other. The reason, therefore, for requiring both to be made parties to one appeal, is even stronger than that which requires two defendants affected alike by a decree to join in an appeal, or else sever in case one be content to abide by the result. If the notice of appeal given in open court was

intended to include Mrs. Padgett also, it was as effectual against her as against the complainant. But if intended to be included, the required supersedeas bond was as important to her as to complainant, and intended equally for the protection of her interests. This bond is not copied in the transcript, as the rules do not permit it under ordinary conditions. The simple recital is: "June 2, 1907, appeal bond filed." An inspection of the original bond in the office of the clerk of the court below shows that it was conditioned solely for the benefit of the complainant Leesnitzer; the defendant Padgett is not mentioned in it.

It is contended that this court has no right to look beyond the transcript as filed, and that the presumption must be indulged that the bond is complete in all respects. *Martin v. Hunter*, 1 Wheat., 304, 361, is cited in support of this contention. Without pausing to consider the difference between the statute regulating writs of error from the Supreme Court of the United States, which was under consideration in that case, and the rule providing for appeals to this court, the proposition may be conceded as sound under ordinary conditions. But, under the conditions of this case, the presumption as regards the recitals of the bond operates rather against than in favor of the appellant. When the transcript in this case was filed, July 17, 1907, it was entitled *Margaret E. Taylor, etc., v. Mary J. Leesnitzer*, and was so entered upon the docket. The usual appearance signed by counsel for appellee was executed under that title. The record was printed as filed, and in September a copy was delivered to counsel for Mrs. Leesnitzer, who also entered his appearance for her. A few days before the case was called for hearing counsel for the appellant informed the clerk that the case had not been properly docketed, as Mrs. Leesnitzer was not the only appellee, and requested that the docket and cover of the records be corrected, making the title appear as follows: "*Margaret E. Taylor, etc., v. Mary J. Leesnitzer, Elizabeth E. Padgett, and Franklin C. Padgett.*" This was done and the cover of the printed record was changed and reprinted as requested. No application was made to the court for leave to do this. The caption of the transcript as it came from the court below remains unaltered. Another copy, with the amended title on the cover, was then delivered to counsel for Leesnitzer. The motion to dismiss was made within twenty days thereafter. The title given by the clerk below to the transcript was the correct one if the bond ran only in favor of Mrs. Leesnitzer, and the presumption is that he followed the obligation of the bond. The ex parte amendment of the docket entry and the title on the cover of the printed record can not have the effect to raise the counter presumption contended for. The appeal was, therefore, correctly dismissed.

The suggestion made on the argument of the case that in the event the motion be held to be well taken the appellant may be allowed to file an additional supersedeas bond and have a citation to Mrs. Padgett and her husband, has been renewed in the present motion.

While we regret to have to dispose of an appeal save upon its merits, we do not perceive how this motion can be granted. Under the provisions of the Revised Statutes (sections 1000, 1005, 1007, and perhaps others) the Supreme Court of the United States has been quite liberal in indulging

presumptions in favor of regularity, and in permitting amendments to writs of error and citations therein. See *Martin v. Hunter*, 1 Wheat., 304, 361; *Peugh v. Davis*, 110 U. S., 227; *Inland, etc., Coasting Co. v. Tolson*, 136 U. S., 572, and other cases referred to therein. In *Scruggs v. M. C. R. R. Co.*, 136 U. S. (Appendix), CCIV, an appeal bond for costs though not signed by all of the appellants, was held to be sufficient surety. In *Shepherd v. Pepper*, 133 U. S., 627, 644, five defendants gave notice of appeal in open court. A supersedeas bond was required of one of them, Gray, in the sum of \$100, which she had neglected to execute. She was in the appellate court on the record, no citation being necessary because of the notice and allowance of appeal having been made in open court, and the court permitted her to execute the bond nunc pro tunc. This had no effect to bring in a new party but amended a defective appeal and perfected it. On the other hand, the same court has, of its own motion, dismissed appeals where a necessary party has not been brought up by the writ of error or the appeal. *Estis v. Trabue*, 128 U. S., 225, 229. It was held in that case that a writ of error might be amended under section 1005 R. S., so as to insert the names of the individual members of a partnership, in the place of the partnership, said names appearing elsewhere in the record. There was, however, another and fatal objection, as stated by Mr. Justice Blatchford in the following words: "But there is another difficulty in the present case, which can not be reached by an amendment in or by this court under section 1005. The judgment is distinctly one against the 'claimants' and C. F. Robinson and John W. Dillard, their sureties in the forthcoming bond, jointly, for a definite sum of money. There is nothing distributive in the judgment, so that it can be regarded as containing a separate judgment against the claimants and another separate judgment against the sureties, or as containing a judgment against the sureties payable and enforceable only on a failure to recover the amount from the claimants; and execution is awarded against all the parties jointly. In such a case the sureties have the right to a writ of error. *Ex parte Sawyer*, 21 Wall., 235, 240. It is well settled that all the parties against whom a judgment of this kind is entered must join in a writ of error, if any one of them takes out such writ; or else there must be a proper summons and severance, in order to allow of the prosecution of the writ by any less than the whole number of the defendants against whom the judgment is rendered. . . . Where there is a substantial defect in writ of error, which this court can not amend, it has no jurisdiction to try the case." In *Mason v. U. S.*, 136, 581, certain sureties sued out a writ of error without joining the principal, and other sureties against whom judgment had gone by default. The court refused leave to amend the writ of error by adding the names of the omitted parties, or for a severance from them, and dismissed the writ of error. No motion to dismiss had been made, and the court discovered the defect on the argument.

As before said, the reasons for requiring all of the opposing parties in interest to be joined on the writ of error or appeal, are stronger than those which apply to the joinder of all those who have an interest identical with the plaintiff in error or appellant. In the latter case, one who has ac-

quiesced in the judgment below is by the summons and severance barred of a writ of error thereafter. Where the opposing interests are joint or inseparable, there is no question of severance; all whose interests are affected in common must be included in the writ of error or appeal. No writ of error issues from this court save to the Police Court in certain cases; all cases are brought up by appeal. Rule X of this court provides that no judgment or decree shall be reviewed unless appeal shall be taken within twenty days, Sundays excluded, after the same shall have been made or pronounced. And the appellant, to supersede the execution of the judgment or decree appealed from, shall within such time of twenty days file a bond conditioned for the successful prosecution of the appeal. The penalty of the bond in this case was fixed at \$1,000. With the passage of the time given by the rule the right of appeal expires. *Mulvihill v. Clabaugh*, 21 App. D. C., 440, 443: 31 Wash. Law Rep. 210.

In *Slater v. Hamacher*, 15 App. D. C., 294: 28 Wash. Law Rep., 115, this court went very far in permitting an amendment citing in certain omitted parties, who should have been joined with the appellant, or else omitted by proper summons and severance. The decree had gone against these other defendants whose interests had been derived from the chief defendant, who alone appealed. They had acquiesced in the decree and were completely bound thereby, and the amendment cured what was considered, as shown by the authorities cited, a formal defect in the proceeding on appeal. Under the rules of the court those parties could not have taken an appeal from the decree after the time therefor had expired, and the notice given to them was a formality. In the present case, on the other hand, the omitted party was opposed in interest to the appellant, and was the beneficiary, jointly with the appellee, of the decree sought to be reviewed. The decree being in her favor she was interested in its maintenance and opposed to its review. To a proceeding to review it, she was a necessary party. As such she had the right to demand that, as to her also, the requirement of the rule should be obeyed. To permit her now to be brought in and made a party to the appeal would be to set aside the rule which is the law of the court as well as of the parties. "Under former decisions this court has no power to set aside its rules relating to appeals, and to permit a bond to be filed in this court in lieu of one that should have been filed in the court below as prescribed in those rules. *U. S. ex rel. Mulvihill v. Clabaugh*, 21 App. D. C., 440, and cases cited." *Darlington v. Turner*, 24 App. D. C., 573, 592: 33 Wash. Law Rep., 114. The situation as said in *Estis v. Trabue*, supra, is one that can not be reached by amendment. It follows that the motion and leave to amend must be denied.

Denied.

Checks.—In conformity with the great majority of the authorities it is held, in *Citizens' Bank v. First Nat. Bank (Iowa)*, 113 N. W., 481, 13 L. R. A. (N. S.), 303, that there must be an actual exhibition of a check and a demand for the payment thereof in order to effect its dishonor, notice of which the holder should give in order to charge those secondarily liable.

**Court of Appeals of the District of Columbia.****THE MOORE PRINTING TYPEWRITER  
COMPANY ET AL., APPELLANTS,****v.****NATIONAL SAVINGS AND TRUST COM-  
PANY ET AL.**

No. 1854. Decided June 2, 1908.

APPEAL from a decree of the Supreme Court of the District of Columbia, in Equity, No. 27,204, in suit by trustee to be relieved of his trust, etc. Affirmed.

Mr. C. A. KEIGWIN and Mr. GEO. P. MONTAGUE for the appellants.

Mr. A. S. WORTHINGTON, Mr. J. J. DARLINGTON, and Mr. J. J. CRAWFORD for the appellees.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an appeal from a decree entered in the Supreme Court of the District of Columbia in an action brought by appellee, plaintiff below, to be relieved from a certain trust agreement, and to be permitted to surrender stock held by it in trust to a new trustee. For convenience, the parties will be referred to as plaintiff and defendants in the same relation they sustained in the court below.

On April 26, 1906, an agreement was made by Bessie P. Cornwell and others, as parties of the first part, with the plaintiff, as the party of the second part. The agreement, among other things, stipulated that its object was to hold together in trust a majority of the corporate stock of the American Planograph Company in order to secure a safe and prudent management of the affairs of the company. The parties of the first part were to transfer to the plaintiff thirty-five thousand and five shares of the capital stock of said company for the purpose set forth in the agreement. Plaintiff issued to each person transferring stock to it, a trustee's certificate, which recited the number of shares deposited by him, and that the holder of such certificate was entitled to an equitable interest in the thirty-five thousand and five shares, equivalent to the number of shares deposited by him, and that on or after March 31, 1911, the holders of such certificates should be entitled to a certificate for an equal number of shares of the stock of said company. It was also provided that on March 31, 1911, the plaintiff should transfer on the books of the American Planograph Company the stock so held in trust, and deliver certificates thereof to each holder of the trust certificates. The agreement contained the usual conditions in such contracts to the effect that the stock should be transferred on the books of the company to plaintiff, and that plaintiff should vote the stock in the manner directed by the owners of a majority of the amount of the trustee's certificates; that a record should be kept of the shares deposited and the holders of certificates; that plaintiff should collect dividends and pay the same to the holders of the trustee's certificates, and that plaintiff should be compensated for its services in an amount stipulated in the agreement. The agreement also provided that upon the resignation of plaintiff as trustee, the holders of a majority, in amount, of the trust certificates should elect a

trustee to fill the vacancy. The plaintiff assumed the trust, under said agreement, and the stock to the full amount was turned over to it by the parties of the first part.

In addition to the above facts, the plaintiff in its bill alleged the performance of the agreement, the transfer to it of the thirty-five thousand and five shares of stock, and the issue of the trustee's certificates therefor. It further alleged that it had notified the parties in interest, through whom it derived its position of trustee, of its desire to resign such position, and that, pursuant to its notice, the holders of a majority in amount of the trust certificates had appointed the New York Trust Company, of the city of New York, to be trustee under the agreement, in the place and stead of the plaintiff.

The plaintiff further alleged that, in suits brought by Cecil H. Moore and Julia B. Moore, respectively, injunctions had been granted restraining the plaintiff from removing the stock from the District of Columbia, and also that plaintiff had been served with notice by the Moore Printing Typewriter Company, Russell W. Montague, and George P. Montague to the effect that they claimed that a large part of the thirty-five thousand and five shares of American Planograph Company's stock, held in trust by the plaintiff, was subject to a trust in their favor. The defendants named in the bill included the holders of the trustee's certificates issued by plaintiff, and also Cecil H. Moore, Julia B. Moore, the American Planograph Company, the Moore Printing Typewriter Company, Russell V. Montague, and George P. Montague. The relief demanded in the bill was "that the complainant may be permitted to resign and retire from its said trust, and to surrender the shares of stock now held by it to a new trustee; and that the complainant may be instructed by the court as to the manner and form of transfer by it to its successor in said trust."

All the defendants, except the appellants, the Moore Printing Typewriter Company, and Russell W. and George P. Montague filed a joint answer, in which they admitted substantially all the facts alleged in the bill, and consented that a decree might be entered relieving the plaintiff of the trust, and authorizing it to surrender the stock to the New York Trust Company, but denied the allegations in the bill that the plaintiff could not so transfer the stock without risk or liability of loss.

The Moore Printing Typewriter Company and Russell W. and George P. Montague filed answers in which they alleged, in substance, that, in January, 1900, and prior and subsequent thereto, the Moore Printing Typewriter Company, a corporation, either by itself, or through the agency of another corporation, the Linomatrix Company (nine-tenths of the stock of which belonged to the Moore Printing Typewriter Company and its stockholders), owned all the inventions and patents for the United States of the defendant, Charles T. Moore, together with all his future improvements thereon; that, thereafter, Moore entered into a conspiracy with the defendants, Henry L. Bryan and George R. Cornwall, for the purpose of acquiring for an inadequate sum the assets of the Moore Printing Typewriter Company and the Linomatrix Company, and to that end entered into a contract with Cornwall by which Moore engaged his services to Cornwall for the

purpose of perfecting inventions relating to printing, and taking out the patents therefor, which inventions are alleged to be of the same character as those which Moore had already assigned to the Moore Printing Typewriter Company. It was further alleged in the answer that the American Planograph Company was formed for the purpose of carrying out this alleged fraudulent scheme, and that 28,831 shares of the stock of that company were issued to Moore, Cornwall, and Bryan, or their appointees, and that the stock so issued, or other stock issued in lieu of it, constituted the greater part of the thirty-five thousand and five shares held in trust by the plaintiff.

Plaintiff set the cause down for trial on bill and answer. On hearing, and before judgment, defendants, by leave of court, filed a cross-bill. It was attempted, by means of this bill, to, in effect, restrain any performance of the trust, under the agreement, either by the plaintiff or its successors in trust; and to prevent any sale of the stock, except upon condition that the proceeds should be held subject to the order of the court. We can not escape the conclusion that this was an attempt on the part of defendants to reap the benefits of an injunction without giving bond. The court, recognizing its inability to grant the prayer under the rules governing equity practice in that court, but apparently anxious to protect the rights of defendants, entered a conditional decree authorizing and directing the plaintiff to deliver to the New York Trust Company, as its successor in trust, all the certificates of stock in the American Planograph Company which it held by virtue of the agreement made between the holders of said stock and plaintiff as trustee, and to make such endorsement upon the certificates of stock held by it as may be required to enable its successor to take complete title to such certificates. It was further decreed that, upon compliance by the plaintiff with the decree of the court, it should be discharged from all liability to the defendants in respect to such certificates and this action, as trustee, under said agreement. This decree, however, was entered with a proviso to the effect that "this decree and order shall be void if on or before the 23rd day of December, 1907 (ten days from the date of the decree), the defendants, The Moore Printing Typewriter Company, Russell W. Montague, and George P. Montague, or one or more of said last named defendants, by way of cross-bill in this case or by original bill in this court as they may be advised shall apply for and obtain a restraining order or injunction with undertaking and security as required by Equity Rule 42 of this court, prohibiting such transfer of said certificates." The case is here on appeal from this judgment.

A motion was filed by plaintiff to dismiss this appeal for the reason that the judgment appealed from had not become final at the date the appeal was taken. The defendants took the present appeal on the same day that the order was entered, without waiting for the expiration of the ten days within which they were permitted to apply for a restraining order under the terms of the decree. It is insisted by counsel for plaintiff that this court is without jurisdiction to consider this appeal for the reason that the decree of the court below, by its terms, did not become final until the 23d day of December, 1907, ten days after the appeal was taken. It is urged that, on the date

the appeal was taken, the purpose of the decree was subject to be defeated by the action of the defendants, and that the decree was of no effect whatever until the expiration of the ten days, when it would, by its terms, become absolute. It is well settled that an appeal will not lie from an interlocutory order, but we do not regard the decree before us as such an order. Here, the condition was one which was available only to the defendants, and, we think, it was within their power to either accept the condition which would have involved further proceedings in the trial court, or prosecute their appeal. Having adopted the latter course, it was equivalent to a waiver of any further right to avail themselves of the condition contained in the decree, and had the effect of making the decree at once final and absolute.

It is urged by counsel for defendants that the bill filed by plaintiff in this cause is in effect a bill of interpleader. With this contention we can not agree. In accordance with the privilege reserved to plaintiff in the trust agreement, plaintiff gave notice of its desire to retire from the trusteeship, and requested the depositors to select its successor. The depositors selected the New York Trust Company. Plaintiff was confronted with defendants' notice to the effect that they had a claim against the stock held by it. This proceeding was brought by the plaintiff, with notice of the conflicting claims, to be relieved of the trust, and instructed as to the manner in which it should turn over the stock to its successor, the New York Trust Company. No attempt was made by defendants to compel a distribution of the stock. They presented no objection to the transfer of the stock. They presented no objection to the transfer of the stock to the New York Trust Company, except to insist, in their cross-bill, that plaintiff should not be relieved of any liability imposed upon it by virtue of said notice.

Plaintiff was not in a position to interplead. It was under a contract with the depositors of the stock, and it could not interplead them and defendants, who claimed under an antagonistic and alleged paramount title. Pomeroy's Eq. Jr., 3d ed., secs. 1326 and 1327. The rule applicable to this case, touching the question of interpleader, was announced by this court in *Richardson v. Belt*, 13 App. D.C., 200, "An essential foundation of the equity of interpleader is, that the party seeking the relief must not be under an independent or special liability to one of the claimants (*Adams' Eq.*, 204; 3 Pom. Eq., sec. 1327). Where there is an independent liability of the party seeking the relief to one of the several defendants, arising out of the relations subsisting between them or upon a special contract creating, for example, the relation of bailor and bailee, landlord and tenant, or creditor and debtor, there can be no interpleader, unless it be made to appear that others have acquired a claim of title or interest under the said liability." The claim here asserted was not derived from the contractual relation existing between plaintiff and the depositors of the stock. The claim affected the title to the stock, for the return of which plaintiff was bound by its contract to one of the parties.

It is clear that defendants' claim affected vitally the depositors of the stock, who held plaintiff's certificates therefor. They could not be forced to try title upon the mere answer of defendants. If defendants were anxious to try title, which seems

doubtful, they should have proceeded in a proper manner to have brought the holders of the trustee's certificates before the court. Having failed in this, if they were in danger of being damaged by the removal of the stock to New York, which is not clearly apparent to us, they could have accepted the invitation of the court, and asked for a restraining order to prevent the removal of the stock from the jurisdiction of the court. This they refused to do.

We fail to discover wherein the rights of defendants have been prejudiced by the action of the court below. There was no error. The judgment is affirmed with costs, and it is so ordered.

Affirmed.

WASHINGTON NATIONAL BUILDING AND  
LOAN ASSOCIATION ET AL., APPEL-  
LANTS,

v.

CARRIE PIFER ET AL.

CONTRACTS; LAW GOVERNING CONSTRUCTION; BUILD-  
ING AND LOAN ASSOCIATIONS; USURY; PUBLIC  
POLICY.

1. The question whether a contract is or is not usurious is, in general, to be determined by the laws of the place where the money is payable.
2. In building and loan association contracts the rule, in the absence of a stipulation to the contrary, is that they are to be governed by the law of the place of performance.
3. A building and loan association, chartered in the State of Virginia, not with the intention of locating in that State, but with the definite intention of locating in this District, where it maintains its principal office and where all payments to it on account of loans, etc., are payable, is to be regarded as having its domicile in this District for the purpose of determining whether or not a loan made by it is usurious.
4. Where in a contract between such an association and a borrower it is stipulated that the contract shall be construed according to the laws of the State of Virginia, such attempt to stipulate against the laws of its domicile, under which the contract would be usurious, will be futile as against the public policy of the jurisdiction, and the contract will be construed according to the laws of this District.
5. The question as to the law governing in the construction of the contract held not affected by the fact that the loan was secured on real estate in West Virginia, in which State the borrower lived.

No. 1801. Decided June 2, 1908.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 26,124, in suit for an accounting, etc. Affirmed.

Mr. M. J. COLBERT and Mr. EDMUND BRADY for the appellants.

Mr. RICHARD C. THOMPSON and Mr. JOHN E. LASKEY for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decree of the Supreme Court of the District of Columbia, granting complainants, appellees here, an accounting and release from a bond and a deed of trust. The case was tried upon agreed statements of fact, from which it appears that the complainant is, and was in September, 1895, a resident of Parsons, W. Va., and the owner of the real estate described in her bill. The defendant, the Washington National Building and Loan Association of Washington, D. C., is a corporation organized under the laws of the State of Virginia and authorized to do business in the State of West Virginia. Its central office, however, has always been located in the city of

Washington, where its books and accounts have been kept and where its business has been managed and conducted.

Prior to September 3, 1895, the complainant petitioned the local board of said association in West Virginia for a loan of \$500, which application being recommended by that board was granted by the board of directors of said association in Washington, and a draft sent from Washington to the attorney of the association at Parsons, W. Va., who after the execution of the bond and deed of trust mentioned in the bill delivered said draft to the complainant. Said bond contains a recital that the association is a body corporate under the laws of the State of Virginia and that the bond is executed under and subject to the laws of that State. All payments in the form of dues, interest, etc., were to be made at the central office of the association in Washington. The complainant made eighty-one payments which exceeded by \$14.16 the sum total of the said loan of \$500 with interest thereon at the rate of six per centum per annum. Thirty-six of these payments were made to the association in Washington, and forty-five payments were made through a representative of the association in the State of West Virginia. Credit, however, was not given the complainant for these payments until the same had been received by the association at its central office, it being understood that said local representative in receiving said payments was the agent of the complainant and not the agent of the association. Under the terms of the agreement between the parties there was due the association at the time of filing this suit \$381.32. If the agreement is held to be usurious, the association had been overpaid to the amount of \$14.16.

It is conceded that under the laws in force in the District of Columbia, when this contract was entered into, it was usurious.

Two questions are presented by the assignments of error:

- (1) That the contract should be construed according to the laws of Virginia; and
- (2) That it should be construed according to the laws of West Virginia.

1. It is obvious that this building and loan association obtained a charter in Virginia, not with any idea of locating in that State, but with the definite and distinct idea and intention of locating in the District of Columbia; hence its name the "Washington National Building and Loan Association of Washington, D. C." As above stated, its principal office has always been located here, its books have been kept here, its officers have lived here, and its business has been transacted here. Its charter merely gave it corporate existence, and, when it came here and located, it became eo instante subject to our laws. By the laws of comity we recognize its charter, but in so doing we do not abrogate our own laws in favor of the laws of the State creating it. The authority of one jurisdiction over a corporation of another jurisdiction is coextensive with its authority over a corporation of its own creation. In the present case neither of the parties to the contract was domiciled in Virginia, nor was the contract to be performed there. Under the law of the District of Columbia the contract was usurious and must have been known to be so when made. It is manifest, therefore, that the attempt on the part of the association to stipulate against the laws of

its domicile must be held to be futile and against the public policy of this jurisdiction. *Nat. Mut. B. & L. Assoc. v. Brahan*, 193 U. S., 635; *N. Y. Life Ins. Co. v. Cravens*, 178 U. S., 389; *Mortgage Co. v. Jefferson*, 69 Miss., 778.

2. A contract, generally speaking, is governed by the law with reference to which it is made, and, as was said in *Croissant v. Empire State Realty Co.*, 29 App. D. C., 547: 35 Wash. Law Rep., 350, "the place provided for payment is, therefore, sometimes of controlling importance when the question in controversy relates to the rate of interest, which may be legal in one jurisdiction and usurious in the other." In that case it was ruled that the contract should be governed by the law of the District of Columbia because "made and apparently intended to be performed therein." In the present case it clearly appears that the contract was to be performed in the District of Columbia, the place of the domicile of the party making the loan. Under the stipulation in the bond that the contract should be controlled by the laws of Virginia, it is apparent that the contract was not made with reference to the laws of the State of West Virginia the domicile of the borrower. The parties, therefore, must be regarded as having contracted with reference to the laws of the District of Columbia, for "with regard to the question what law is to decide, whether a contract is or is not usurious, the general rule is the law of the place where the money is made payable." *Railroad Co. v. Bank of Ashland*, 12 Wall., 226. In building and loan association contracts the rule appears to be well settled that, in the absence of a stipulation to the contrary, they are to be governed by the law of the place of performance. In *Bedford v. Eastern Building and Loan Assoc.*, 181 U. S., 243, the court refers with approval to the case of *Pioneer, etc., Loan Co. v. Cannon*, 96 Tenn., 599, where a note secured by mortgage was given by a citizen of Tennessee to a building association and made payable at Minneapolis, Minn. It was held that the contract was a Minnesota contract and governed by the laws of that State.

A number of cases involving the same question here in issue have been passed upon by Federal courts in different jurisdictions, and with great uniformity it has been held that the law of the State of the domicile of the association, and where the contract was to be performed, should govern its construction. *Building & Loan Assoc. v. Logan*, 66 Fed., 827; *Vermont L. & T. Co. v. Dygert*, 89 Fed., 123; *Dygert v. Vermont L. & T. Co.*, 94 Fed., 913; *Loan & Investment Co. v. Alexander*, 96 Fed., 870; *Hamilton v. Fowler*, 99 Fed., 18; *Hieronimus v. Building & Loan Assoc.*, 101 Fed., 12; *MacMurray v. Gosney*, 108 Fed., 11; *McIlwaine v. Ellington*, 111 Fed., 578; *Savings & Loan Co. v. Harris*, 113 Fed., 27; *Building & Loan Assoc. v. Hotel Co.*, 120 Fed., 422; *Alexander v. Building & Loan Assoc.*, 120 Fed., 963; *Loan & Bldg. Co. v. Green*, 123 Fed., 43; *Lewis v. Clark*, 129 Fed., 570.

In the case at bar we are not disposed to indulge in any presumption in favor of the association owing to its attempt to avoid the laws of this jurisdiction. Originally it was within its power to have contracted with reference to either the law of this District or the law of West Virginia. Failing to do either in terms, the contract must be controlled according to the general rule. The association was located here, and here the contract

was to be performed. That the security for the loan consisted of real estate in West Virginia does not affect the question. *De Wolf v. Johnson*, 10 Wheat., 367.

We hold, therefore, that the contract must be controlled by the law of the District of Columbia. It follows that the decree must be sustained with costs, and it is so ordered.

Affirmed.

In *Washington National Building and Loan Association et al. v. Hill*, and *Same v. Nichols* (Nos. 1805 and 1806), in which the facts were materially the same as in the foregoing case, the decrees were affirmed, in opinions by Mr. Justice ROBB.

Mr. M. J. COLBERT and Mr. EDMUND BRADY for the appellants.

Mr. TRACY L. JEFFORDS for the appellee.

# THE WASHINGTON NATIONAL BUILDING AND LOAN ASSOCIATION ET AL., APPELLANTS,

v.

WILLIAM G. CONLEY.

No. 1800. Decided June 2, 1908.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 26,004, in suit for an accounting, etc. Affirmed.

Mr. M. J. COLBERT and Mr. EDMUND BRADY for the appellants.

Mr. R. C. THOMPSON and Mr. JOHN E. LASKEY for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

In this case the facts are substantially the same as the facts in *Washington National Building and Loan Association et al. v. Carrie Pifer and John W. Pifer* (No. 1801), just decided, except that Conley is not the owner of the real estate mentioned in the bill, having conveyed the same by a deed in which he agreed to save the grantee harmless from any claim the association might assert against the property under its deed of trust. Prior to the filing of this suit by Conley the association had commenced foreclosure proceedings in West Virginia against said property.

Remedy at law being inadequate, we think Conley entitled to prosecute this suit.

Decree affirmed, with costs.

Affirmed.

**Payment of Legacy in Trust.**—In *St. Mary's Hospital v. Perry*, 92 Pacific Reporter, 864, testator made a bequest to plaintiff for the endowment of a bed for the poor. Defendant, as executrix, alleged readiness to pay over the money if plaintiff would agree to carry out the terms of the bequest, but that plaintiff had refused. The California Supreme Court held that it was no concern of defendant as to what plaintiff might intend to do with the money, and directed that payment be made.



## Court of Appeals of the District of Columbia.

WILLIAM A. RICHARDS, APPELLANT.

v.

GARFIELD A. STREET.

NOTES; ENDORSEMENT BY PARTNERS; ESTOPPEL; FILLING IN BLANKS; HOLDER IN DUE COURSE; SEVENTY-THIRD RULE.

1. Where the name of one member of a partnership to whom a note was made payable was indorsed thereon by his copartner, who subsequently indorsed the note in the name of the partnership and negotiated it, and the partnership received the proceeds of the note, the partner to whom the note is made payable is estopped to deny the genuineness of his signature; and the maker of the note can not defend against liability on account of it on the ground that the name of the payee was forged.
2. A party signing a note in blank and delivering it to the payee named therein to be filled in with the amount for which a prior note is to be renewed, is liable to a holder in due course as if it had been filled up strictly in accordance with the authority given.
3. Whether a bank which merely gives credit for the amount of a note to a party discounting it and still holds the money unpaid to him or upon his check, is a holder for value, within sec. 1330 of the Code, *quære*; but to avail himself of such a defense the defendant must allege, in addition to the fact that it was so applied, that at the time of notice the money was in the bank to the credit of the discountor.
4. An affidavit of defense construed and held insufficient.

No. 1876. Decided May 19, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,061, entered in an action on promissory note for insufficiency of affidavit of defense. Affirmed.

Mr. W. C. PRENTISS for the appellant.

Mr. HOWARD BOYD for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was brought by Street against Richards to recover the sum of \$440 on a promissory note for that amount. The said note, with its indorsements, reads as follows:

"WASHINGTON, D. C., Aug. 20, 1907.

Ninety days after date we promise to pay to the order of Albert M. Cowell four hundred forty dollars at Fourteenth St. Savings Bank.

Value received with interest at the rate of six per cent. per annum.

No. 3057. Due Nov. 18, '07.

ALBERT M. COWELL & SON,  
Room 4, 14th St. Savings Bank.

Endorsed by Wm. A. Richards, Albert M. Cowell, Albert M. Cowell & Son, and the Fourteenth Street Savings Bank."

The declaration was accompanied by an affidavit under the 73d Rule of the Supreme Court of the District, in which, after describing the note with its indorsements, it is alleged that plaintiff is the legal holder of said note, which has been duly presented and protested for nonpayment, with notice to the maker and indorsers; that there is justly due plaintiff the said sum of \$440, with interest at the rate of 6 per cent per annum from August 20, 1907, and the additional sum of \$2.23, costs of protests. The proceedings showing protest and notice were also filed.

The defendant pleaded non assumpsit and nil debet, and made the following affidavit of defense:

"William A. Richards, being duly sworn, says

that he is the defendant in the above-entitled cause, and denies the right of the plaintiff therein to recover any sum whatever; that he never indorsed to the Fourteenth Street Savings Bank the alleged note mentioned in the plaintiff's declaration and affidavit in said cause; that heretofore and long before the date of said alleged note the affiant had indorsed for the accommodation of Albert M. Cowell a certain note which had been discounted by the Commercial National Bank and which had been curtailed and renewed from time to time, and for the purpose of a renewal of said note at or about the date of the alleged note now sued upon the affiant indorsed a blank form of note and inserted the name of said Albert M. Cowell therein as payee and transmitted the same to said Cowell for the purpose of renewing the said note held by the Commercial National Bank; neither the said Cowell nor any other person or persons had any authority to fill in the blanks in said note or use the same for any other purpose than to renew the said note held by said Commercial National Bank; that the affiant has examined the alleged note now sued upon and recognizes it as the blank form indorsed by him as aforesaid and transmitted to said Albert M. Cowell for the purpose aforesaid; that the same is signed by A. M. Cowell & Son and the blanks upon its face filled out in the handwriting of Sylvester C. Cowell the active member of the firm of A. M. Cowell & Son; that the said note purports to be endorsed by Albert M. Cowell, but the affiant is familiar with the genuine signature of said Albert M. Cowell and can not recognize the said indorsement and in his opinion the said indorsement is a forgery and he so expects to prove at the trial; that he is informed and expects to prove at the trial that the said alleged note now sued upon was also indorsed in the name of said firm of A. M. Cowell & Son as the last indorsers and presented at the Fourteenth Street Savings Bank for discount by said Sylvester C. Cowell on behalf of said firm of A. M. Cowell & Son and was discounted by said bank and the proceeds thereof placed to the credit of said firm and the affiant is advised that even if the said alleged note was in fact indorsed by said Albert M. Cowell the firm of A. M. Cowell & Son had no power or authority to negotiate the same to said Fourteenth Street Savings Bank and that the said Fourteenth Street Savings Bank was put upon inquiry as to the authority of said firm to negotiate the said alleged note and did not become an innocent holder thereof with any right of action against the affiant; that the said Fourteenth Street Savings Bank held the said alleged note now sued upon at the maturity thereof and thereafter and the affiant is informed and believes and expects to prove at the trial that the plaintiff, Garfield A. Street, is prosecuting this suit merely as nominal holder of said alleged note for the benefit of said Fourteenth Street Savings Bank."

On motion of plaintiff the court entered judgment against the defendant for the amount claimed for want of sufficient pleas and affidavit of defense; and defendant has appealed therefrom.

1. The first assignment of error relates to the sufficiency of the plaintiff's affidavit. The contention is that it alleges the indorsement of the note by defendant after, instead of before the indorse-

ment by Albert M. Cowell and A. M. Cowell & Son, wherefore there is a variance between the note as alleged and the one referred to. It is argued that the defendant's liability, as accommodation indorser, is only to parties subsequent to the payee, as provided in section 1368 of the Code. The affidavit does not recite that the indorsement of defendant followed that of the payee. This might be said of the declaration, however, but any mistake therein is corrected by the particulars of demand attached and referred to, which sets out a correct copy of the note with the indorsements showing defendant to be the first indorser. The judgment was entered upon the recitals of the affidavit which were accurate. Moreover, no question of liability to the subsequent indorsers arises. The action is by the last holder for value against the defendant alone.

2. The next point made is on the allegation of the affidavit of defense to the effect that the name of Albert M. Cowell was not indorsed by him, but is a forgery. The allegation is, substantially, that the name of Albert M. Cowell, as indorsed, is believed to be in the handwriting of Sylvester C. Cowell, and, therefore, a forgery. Assuming, without deciding, that this statement is sufficient to put the question of forgery in issue, we are of the opinion that, under the facts shown, this constitutes no defense to the action. Sylvester C. Cowell is a partner of Albert M. Cowell & Son, who indorsed the note thereafter and negotiated it. By so acting, they must be understood as affirming that the indorsement was by Albert M. Cowell or by his authority. *Horstman v. Henshaw*, 11 How., 177, 183. The presumption is that Sylvester C. Cowell, as a member of the partnership, was authorized to indorse the partnership name; and A. M. Cowell is estopped thereby, as well as by the receipt of the proceeds of the indorsement, to deny the genuineness of his signature which the partnership indorsement affirms. *Burgess v. Northern Bank of Ky.*, 4 Bush, 600, 604.

3. The next assignment of error is founded on the allegation of the affidavit of defense, to the effect that the appellant had previously indorsed a note for the accommodation of Albert M. Cowell which had been discounted with the Commercial National Bank and renewed thereat from time to time; and that for the purpose of again renewing said note in said bank, he wrote the name of Albert M. Cowell in the blank form of note, indorsed the same, and transmitted it to said Cowell for the sole purpose of filling in the proper amount and delivering the said note to said bank. The allegation constitutes no defense. A note indorsed under such circumstances and delivered to a holder in due course "is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time." Code, sec. 1318. This was the established rule of law before the passage of the Negotiable Securities Act. *Goodman v. Simonds*, 20 How., 343, 361; 1 *Daniel Neg. Inst.*, secs. 144, 843, and 844.

4. The last ground of defense alleged in the affidavit of defense, is that the Fourteenth Street Bank was not a holder for value because in discounting the note it merely gave the firm of A. M. Cowell & Son credit for the same on its books. The affidavit, it will be remembered, alleges that the plaintiff is merely a holder of said note for the

benefit of the said bank. It may be true that a bank which merely gives a credit for the amount of the note to the discountor, and still holds the money unpaid to him or upon his check, is not a holder for value within the meaning of section 1330 of the Code, but it is unnecessary to decide that question. To avail himself of such a defense, the defendant, in addition to the fact that the discount was so applied, must also allege that the money, at the time of notice, remained in the bank to the credit of the discountor. If it has been paid to him or his order, the bank necessarily becomes a holder for value. *Mann v. Nat. Bank of Springfield*, 34 Kansas, 746, 755.

We find no error in the entry of judgment on the motion, and it will, therefore, be affirmed with costs.

Affirmed.

# METROPOLITAN LIFE INSURANCE COMPANY, APPELLANT,

v.

## CHARLOTTE HAWKINS.

INSURANCE POLICY; BREACH OF WARRANTY; FAILURE TO FURNISH INSURED WITH COPY OF APPLICATION.

1. Under section 657 of the Code, where a life insurance company fails to deliver to the insured, with the policy, a copy of the entire application made by the insured, the company will be precluded from defending against an action on the policy on account of anything contained in or omitted from such application.
2. Held, therefore, that where only a part of the application had been delivered to the insured, the defendant could not defend by showing that statements contained in the application were false.

No. 1887. Decided June 2, 1906.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,357, entered upon an agreed statement of facts in an action on a policy of life insurance. Affirmed.

Mr. W. V. R. BERRY, Mr. B. S. MINOR, and Mr. H. B. ROWLAND for the appellant.

Mr. W. G. GARDINER and Mr. E. N. HOPEWELL for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun in the justice's court by Charlotte Hawkins against the Metropolitan Insurance Company, a corporation created by the laws of the State of New York, to recover the sum of \$220 upon a policy of insurance issued on the life of Edward Hawkins in which she was named as the beneficiary. Judgment was rendered for defendant, from which plaintiff appealed to the Supreme Court of the District. The case was there submitted to the court upon an agreed statement of facts, and resulted in a judgment for the plaintiff, from which the defendant has prosecuted this appeal. The facts of plaintiff's case are these. On March 20, 1906, Edward Hawkins made application for insurance to the insurance company which issued its policy on April 2, 1906, agreeing therein to pay to said Charlotte Hawkins, the mother of the applicant, the sum of \$220 in the event of his death within three years. Edward Hawkins died December 9, 1906, and plaintiff furnished the required proof of death. The defense was that the

insured warranted in his said application that he was in sound health, had not been under the care of any physician for two years prior to the date of application, and had never been treated in any dispensary, hospital, or asylum; whereas he had in fact been treated in the Emergency Hospital for aneurism of the arch of the aorta, from July, 1905, to December, 1905, and his death was caused by said disease.

In support of this defense, the defendant offered the application in evidence to show the said representations and warranty, and then offered to prove by Dr. Thomas that he had treated the deceased in the Emergency Hospital and in Georgetown Hospital between July 5, 1905, and December, 1905, for aneurism of the arch of the aorta, that he was present at an autopsy of his body on December 9, 1906, which disclosed the fact that death was caused by said disease.

Plaintiff objected to the introduction of the application on the ground that a copy of the same had not been delivered with the policy as required by section 657 of the Code; and to the testimony of the surgeon as prohibited by section 1073.

The application offered in evidence is a paper of two leaves or four pages, on the top of the first page of which appears in large letters the words: "Application to the Metropolitan Life Insurance Company." It is divided in four parts entitled A, B, C, and D. Part A is required to be filled out by the agent and signed by the applicant. This shows the name, residence, occupation, place of birth, and age of applicant; the amount of the insurance, the premium to be paid, and the name, age, and relationship of the beneficiary. It also shows, by question and answer, that the applicant has no other policy in this or any other company. This was signed by Edward Hawkins under the words, "I hereby apply for the above-described policy." Part B is the agent's certificate, containing his answers to questions propounded to him touching his knowledge of the risk. Part C contains eleven printed questions propounded to the applicant by the medical examiner. This contains the heading showing application and the warranty of the truth of the representations therein made. The first paragraph relates to occupation and the answer is entered as hotel waiter. The remaining paragraphs relate to certain diseases and physical conditions; to medical treatment, former injuries, former insurance; and to existence of pulmonary or scrofulous diseases in family. To show the form of these paragraphs, that on which the defense is founded is here inserted:

"5. I have not been under the care of any physician within two years unless as stated in previous line, *except*." These are followed by printed provisions, the first of which is: "I agree that as to each and every one of the foregoing paragraphs, where nothing is written after the word 'except,' I warrant the statement therein made without exception." Others contain an express warranty, a waiver of the benefit of the provisions of the New York statute, section 88, chapter 690, passed May 18, 1892, a special requirement that any physician who has attended the applicant may disclose any information acquired by him affecting the declarations and warranties made, and a waiver of the provisions of any statute making such physician's knowledge privileged, or forbidding him to

testify. No entries were made under any of the foregoing paragraphs but the first. The signature of Edward Hawkins appears at the bottom of the page. Part D on the third page contains the report of the medical examiner and is signed by him alone. The policy refers to the application, "a copy of which is hereto attached," making it and its warranties a part of the contract. On the back of this policy appears a substantial copy of Part C aforesaid, and of no other part of the said application. The provision of the statute, on which the objection to the introduction of the original application in evidence is founded, is section 657 of chapter 18 of the District Code, relating to corporations. It reads as follows: "*Sec. 657. Copy of Application to be Delivered With Policy.*—Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in or omitted from such application." Statutes similar to this exist in some of the States and have been held to require that a substantial copy of the entire application on which the policy has been issued should be delivered therewith, to permit a defense to an action on the same on account of anything contained in or omitted from the application. *Nugent v. Greenfield Life Assn.*, 172 Mass., 278, 281; *Considine v. Mutual Life Ins. Co.*, 165 Mass., 462, 466; *Johnson v. Insurance Co.*, 105 Iowa, 273; *Norris v. State Life Ins. Co.*, 183 Pa. St., 563, 571; *Insurance Co. v. Howie*, 68 Ohio St., 614, 618; *Mutual Life Ins. Co. v. Moore*, 117 Ky., 651, 653.

We agree entirely with Mr. Justice Barnard, who rendered the judgment, that the application was not admissible in evidence by reason of the provisions of section 657, and adopt the following extract from his opinion which is found in the record:

"Part A must necessarily be a part of the contract of insurance, for it contains the important facts which enable the company to know the character of the risk to be assumed, and the answers to questions which the insured is required to state truly over his signature as the basis for the contract.

"I do not think that parts B and D constitute any portion of the contract between the insured and the defendant company, but part A and part C are both required to make a complete application, and both necessarily entered into the contract; and under the provisions of section 657 of the Code, both of these parts should have been delivered with the policy in order that the whole contract may appear.

"It is not enough that part C be furnished with the policy; part A is referred to in part C, and both enter into the contract."

Without reciting the statements of part A, some of which are practically remade in part C, there is one not so remade, namely, the age of the applicant. This determines the amount of the premium in the first instance and is therefore material. Although by the terms of the policy misstatement of the age does not avoid all claims thereunder, it is material in that the insurer may discharge the claim of the policy, in case of death,

by paying the sum, only, that the premium, based on mistaken age, would have purchased at the true age. This question of materiality, however, is settled by the statute which requires a copy of the application, that is to say the entire application, that is made for the policy. It is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy. This conclusion renders it unnecessary to consider the question of the competency of the physician's testimony. The application being inadmissible as a ground of defense, there remained no foundation for other evidence.

Statutes similar to ours have been upheld in several of the States as clearly within the legislative power. See cases before cited. There seems to be little or no doubt that the like power resides in the Congress of the United States to be exercised in the District of Columbia. The appellant, however, is in no position to raise the broad question. It is a foreign corporation that may be prohibited from doing business in the District of Columbia, or admitted under any conditions that Congress may impose. Accepting the permission, it must perform the condition.

The judgment will be affirmed with costs.  
Affirmed.

**Notice of Accident to Charge Insurer.**  
[New York Law Journal.]

The Harvard Law Review for March, 1908, contains the following editorial note on the recent decision by the New York Court of Appeals in *Woolverton v. Fidelity & Casualty Company*, 190 N. Y., 41:

"Insurance—Accident Insurance—Requirement of Immediate Notice of Accident in Employers' Liability Insurance.—An employers' liability insurance policy required the insured to give immediate notice of an accident. A rule was posted in the office of the insured's stable foreman requiring drivers to report all accidents immediately. The foreman, learning of an accident caused by one of the drivers, failed to report it. The insured's general manager gave immediate notice to the insurer when he learned of the accident one month later. Held that the insured can not recover because of failure to give immediate notice. *Woolverton v. Fidelity & Casualty Co.*, 190 N. Y., 41.

"Failure to satisfy a requirement of immediate notice in an accident insurance contract is a bar to recovery. *Travellers' Ins. Co. v. Myers*, 62 Oh. St., 529. Such a requirement, of course, can not be taken literally. It is satisfied by notice given with due diligence under all the circumstances and without unnecessary delay. *Ward v. Maryland Casualty Co.*, 71 N. H., 262. The insurer's duty in the present case is to exonerate the insured, and it is entitled to every facility for effecting an equitable settlement with the injured party. Since an immediate investigation of the facts is essential to an accurate determination of the existence and extent of liability, it is just to interpret the requirement as imposing upon the employer the duty not only of reporting accidents which have come to his personal attention, but of immediately discovering and reporting all accidents. Since this duty, by its nature, must be partially performed by agents, and the principal is responsible for the negligent performance of a delegated duty, the failure of the foreman to use due

diligence in reporting the accident may be imputed to the insured, and the requirement of immediate notice is not satisfied. *Northwestern, etc., Co. v. Maryland Casualty Co.*, 86 Minn., 467; contra, *Mandell v. Fidelity & Casualty Co.*, 170 Mass., 173."

It is a source of satisfaction that the Harvard Law Review concurs in our view that the New York case was rightly decided (see New York Law Journal, December 6, 1907), thereby disapproving of the Massachusetts decision in *Mandell v. Fidelity and Casualty Company*, 170 Mass., 173. In the opinion in the *Woolverton* case, Chief Justice Cullen remarked as to *Mandell v. Fidelity and Casualty Company*:

"It was there held that the plaintiff was not chargeable with knowledge of the accident because his servants had such knowledge. 'Neither his driver, stableman, nor foreman were his agents for the purpose of giving notice to the (insurance) company.' So far as drivers, stablemen, and the like are concerned, we concur in the declaration of the learned Massachusetts court, but as to the superior agents or employees whose duty it is to supervise the conduct of the subordinate servants and to report to the master accidents or casualties caused by such inferior servants we must adhere to the views we have already expressed."

In view of the vital necessity to an insurer of opportunity to investigate the facts it is only fair that the doctrine respondeat superior should be applied to the insured to the extent, at least, to which the New York court goes. The position of the Massachusetts court is somewhat anomalous in view of the fact that in ordinary accident insurance it administers the notice requirement with great strictness in favor of the insurer. Thus, in the recent case of *Hatch v. U. S. Casualty Company* in the Supreme Judicial Court of Massachusetts (83 N. E., 398), it appeared that insured in an accident policy against bodily injury, providing that written notice shall be given within ten days of an event causing an injury, met with an accident July 7th. He did not consider the accident of any account, but continued in his usual health until August 7th, when he was confined to his bed and died four days later. Notice of the injury was not given to the insurer until after insured's death. It was held that the failure to fix the liability by giving notice within ten days of the accident freed the insurer from liability.

This was a hard case against the beneficiary of the policy, because, without suspicion that his injury was of any seriousness and, therefore, without actual negligence, the insured failed to give the notice. In employers' liability insurance the utility and importance of immediate notice to the insurer are, if anything, even greater than in ordinary accident insurance, and it would seem that the position of the New York court imposing a certain duty upon the insured to obtain as well

as to give notice is no more than just.

Comity of Laws.—The contract evidenced by a mutual benefit certificate issued by a branch of the order located in the State where the member resides, countersigned by the officers of such branch, and delivered at the place of his residence, is held in *Dolan v. Supreme Council, C. M. B. A.* (Mich.), 113 N. W., 10, 13 L. R. A. (N. S.), 424, to be governed by the law of that State, although the association is organized under the laws of another State.

**Contracts.**—A partnership agreement to organize a railroad corporation and secure a profit by inducing it to turn over to a construction company for the construction of the road its stock and bonds of a par value in excess of the actual cost of construction is held, in *Leeds v. Townsend*, 228 Ill., 451, 81 N. E. 1069, 13 L. R. A. (N. S.), 191, not to be void as against public policy.

The well-recognized doctrine that a contractor who is prevented by the act of the other party to the contract from completing his work may treat the contract as rescinded, and maintain an action of quantum meruit for the services and materials furnished in the construction of the building, is reaffirmed in *Valente v. Weinberg*, 80 Conn., 134, 67 Atl., 369, 13 L. R. A. (N. S.), 448.

A contract whereby one interested in defeating the probate of a will agrees to interpose no objection thereto is held, in *Grochowski v. Grochowski* (Neb.), 109 N. W., 742, 13 L. R. A. (N. S.), 484, not to be void as against public policy, unless made collusively and in fraud of other parties interested in the estate.

**Guardian Acting as Attorney Against Wards.**—A queer mix-up of opposing interest comes to light in *Greenlee v. Roland*, decided by the Supreme Court of Arkansas, and reported in 107 *Southwestern Reporter*, 193, where the guardian of certain minors accepted employment as attorney for other persons instituting a proceeding against his wards, and employed another attorney to defend their interests. The relatives of the infants, not being satisfied with the arrangement, employed another lawyer to assist in preserving their rights, and the case at bar was to recover his compensation. He was held entitled to recover.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

J. Wilmer Latimer, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Dixon Fullerton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1908. ANGUS L. FULLERTON, Chillicothe, Ohio. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,317. Administration. [Seal.] 27-31

### Legal Notices.

Brandenberg & Brandenberg, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward F. Droop, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of June, 1908. ANNA A. DROOP, 1455 Harvard st.; EDWARD H. DROOP, 925 Pa. ave.; CARL A. DROOP, 925 Pa. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,304. Administration. [Seal.] 27-31

Edwin C. Dutton, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Wheeler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. EDWIN C. DUTTON, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,345. Administration. [Seal.] 27-31

Geo. Francis Williams, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of H. Maria Patton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. ROBERT W. PATTON, Box 210, Lewistown, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,362. Administration. [Seal.] 27-31

William A. Donch, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Addie R. Perkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1908. ELENA SMITH CHAPMAN, 610 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,225. Administration. [Seal.] 27-31

W. Mosby Williams, Solicitor  
In the Supreme Court of the District of Columbia.  
Samuel C. Redman et al. v. Aaron H. Potts et al.  
Equity, No. 27,069.

John C. Weedon and W. Mosby Williams, trustees, having reported sale at public auction of part of the real estate decreed to be sold in this cause, to wit, 84 lots in the subdivision known as "Garfield Heights" and in said decree particularly described, situate in the District of Columbia, to M. Rebecca Reid, for the sum of six hundred and forty dollars (\$640), it is, this 26th day of June, 1908, ordered that said sale will be ratified and confirmed on the 27th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. By [Seal] the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. E. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 27-31

**Legal Notices.**

**Crandal Mackey, Solicitor**  
In the Supreme Court of the District of Columbia.  
Catharine T. Allen, Complainant, v. Luke Welch,  
Michael Welch, Clara C. McCauley, Francis J.  
Welch, Lillian E. Welch, Bessie Welch, and Mary  
Welch. In Equity, No. 28,818.

Crandal Mackey, trustee in the above entitled cause, having reported that he has sold all the real estate involved therein, namely, the north seventeen feet front by depth thereof of lot No. 11, in square No. 16, in the city of Washington, District of Columbia, known as premises No. 938 26th st. N. W., unto John G. Slater, agent, for the sum of four hundred and thirty-five dollars (\$435), it is, this 30th day of June, A. D. 1908, ordered that the said sale be confirmed unless cause to the contrary be shown on or before the 30th day of July, A. D. 1908. Provided this order be published once a week for three successive weeks before said last mentioned day

In The Washington Law Reporter. By the  
[Seal] Court: ASHLEY M. GOULD, Justice. A true  
copy. Test: J. R. Young, Clerk, by Wms. F.  
Lemon, Asst. Clerk. 27-St

**Coldren & Fenning, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Burr Vickers, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. FREDERICK A. FENNING, Century Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,356. Administration. [Seal.] 27-St

**Lawrence Hufty, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cara H. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of June, 1908. THEODORE D. WILSON, 52 Broadway, N. Y. City; MALCOLM HUFTY, 416 5th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,709. Administration. [Seal.] 27-St

**Blair & Thom, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alice Peyton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. JOHN B. PEYTON, 111 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,852. Administration. [Seal.] 27-St

**Harry G. Kimball, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George D. Seely, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. ALICE H. SEELY, care of Harry G. Kimball, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,313. Administration. [Seal.] 27-St

**Legal Notices.**

**William A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas C. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-St

**Henry C. Davis, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Margaret J. Badger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of June, 1908. CHARLES J. BADGER, Annapolis, Md.; ANNIE M. ELLIOTT, Marine Barracks, Wash., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-St

**A. A. Hoehling, Jr., Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles S. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of June, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by William D. Hoover, Second Vice-President; A. A. HOEHLING, Jr., 1416 F st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,342. Administration. [Seal.] 27-St

**Douglas & Douglas, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Povey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. W. H. RONSVILLE, 1840 New York ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,150. Administration. [Seal.] 27-St

**Wm. L. Pollard, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Randolph Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. ELIZA SAUNDERS, 515 3d st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 27-St



**Legal Notices.****SECOND INSERTION.**

Thomas Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Rebecca S. Nichols, Deceased.

No. 15,291. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Louise S. Nichols, it is ordered this 25th day of June, A. D. 1908, that John H. Nichols, Howard E. Nichols, Clarence H. Nichols, Emie J. Curry, Lula Fernandez, Franklin O. Nichols, Hugh H. Nichols, Bernard Nichols, Carroll Nichols, Ernest Nichols, Rudolph Nichols, Mary Nichols, Mrs. Mary Nichols, and all others concerned, appear in said court on Tuesday, the 28th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-31

James F. Bundy, Solicitor

In the Supreme Court of the District of Columbia.  
Susie A. Taylor v. William Thornton Taylor and Kate M. Myers, Otherwise Called Kate M. Taylor.

No. 27,740. Equity Doc. 61.

The object of this suit is to obtain an absolute divorce in favor of said Susie A. Taylor from her husband, said William Thornton Taylor, on the ground of adultery, the said Kate M. Myers, otherwise called Kate M. Taylor, being named as co-respondent. On motion of the complainant, it is, this 23th day of June, 1908, ordered that the defendants, William Thornton Taylor and Kate M. Myers, otherwise called Kate M. Taylor, cause their appearance to be entered herein on or before the fourth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk, 26-31

W. L. Pollard and M. N. Richardson, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court for Said District.  
George A. Scott, Complainant, v. Henry Schroeder et al., Defendants.

Equity No. 27,627.

The object of this suit is to declare the title to part of lot 18, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18th street by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in Liber 829, folio 69, et seq., of the land records of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof, for more than twenty-two years. On motion of the complainant, it is this 23d day of June, A. D. 1908, ordered that the defendant, Henry Schroeder, if living, or if dead, the unknown heirs, allies, and devisees, if any, of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 26-51

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**Legal Notices.**

John J. Hemphill, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James A. Bates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of June, 1908. HENRY C. BATES, 29th st. and Fifth ave. New York City, N. Y. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,300. Admn. [Seal] 26-31

Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Margaret Nugent, Deceased.

No. 15,322. Administration Docket 38.

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by F. J. O'Connell, it is ordered this 19th day of June, A. D. 1908, that Patrick Nugent and the unknown heirs at law and next of kin of Margaret Nugent, deceased, and all others concerned, appear in said court on Monday, the 27th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-31

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel Becker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK A. FENNING, Century Bldg. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,351. Administration. [Seal.] 26-31

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Boegeholz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK W. BERGMAN, Suitland, Md. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,339. Administration. [Seal.] 26-31

Berry & Minor, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jane L. Stone Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of June, 1908. BENJAMIN S. MINOR, Colorado Building; HORACE B. STANTON, 608 State st., Boston, Mass. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,248. Administration. [Seal.] 26-31

**Legal Notices.**

**Hugh T. Taggart, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Michael McKenna, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1908. JOHN C. O'DONOGHUE, by Hugh T. Taggart, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,341. Administration. [Seal.] 25-St

**THIRD INSERTION.**

**Milton Strasburger and W. M. Williams, Solicitors**  
In the Supreme Court of the District of Columbia.  
Julian F. Scott et al. v. Corinne L. Scott et al.  
Equity, No. 23,384.

Milton Strasburger and W. Mooby Williams, trustees, having reported an offer from John F. Allwine of one hundred dollars cash for the north 20 feet front on 12th street by the full depth that width of lot one in square 884, and from Henry A. Herrell and John F. O'Neill of one hundred dollars cash for lot six in square 1107, as set forth in their report filed in this cause, it is this 12th day of June, 1908, ordered that said trustees be and they are hereby authorized and directed to accept said offers, and that the sale of said property to said parties respectively will be ratified and confirmed on the 13th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of the three successive issues of The Washington Law Reporter published prior to the last mentioned day. By the Court: HARRY M. CLABAUGH, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

**Geo. Francis Williams, Solicitor**

In the Supreme Court of the District of Columbia.  
Anna Marie Rochee, a Minor, by Burr N. Edwards,  
Her Guardian; Catharine A. Rochee, Widow, v.  
Catharine Honora Rochee, an Infant. No. 27,817.  
In Equity.

George Francis Williams, trustee in the above-entitled cause, having reported that he has sold all of the real estate involved therein, namely, part of original lot twenty-five (25) in square five hundred and fifteen (515), situate in the city of Washington, in the District of Columbia, and known as premises 1086 Fourth street northwest, unto Gelsomino Cerrone, for the sum of two thousand two hundred and ten dollars (\$2,210), it is, this 12th day of June, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 13th day of July, 1908. Provided this order be published once a week for three successive weeks before said last-mentioned day in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 25-St

**John C. Heald, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Nicholas Drummond, Deceased.  
No. 15,398. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Mary Ann Murray, it is, this 19th day of June, 1908, ordered that Thomas J. Murray and Mary Bane, and all others concerned, appear in said court on Tuesday, the 21st day of July, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

[Seal] said return day. ASHLEY M. GOULD, Justice. Attest: M. J. Griffith, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

**Legal Notices.**

**Carlisle & Luckett, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah J. Obold, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. ANNIE C. TUOHY, 1718 18th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,338. Administration. [Seal.] 25-St

**Alex. H. Bell, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert F. Costello, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. MINNIE E. COSTELLO, 45 H st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,314. Administration. [Seal.] 25-St

**Lester & Price, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Anton Remy, Deceased.  
No. 15,248. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Elizabeth Remy, it is ordered this 12th day of June, A. D. 1908, that Katherine McKay and Sophronia Limmer, and all others concerned, appear in said court on Tuesday, the 21st day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. Attest: JAMES ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-St

**Blair & Thom, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary L. Town, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. EDNA D. T. NEWTON, care of Blair & Thom, Colorado Building. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,380. Admn. [Seal.] 25-St

**Wm. E. Ambrose, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Ann M. Frain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of June, 1908. HENRY W. TIPPETT, 1417 E st. S. E., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,168. Admn. [Seal.] 25-St

**Legal Notices.**

**R. R. Horner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Broadus, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **PERRY H. CARSON**, 834 3d st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,333. Administration. [Seal.] 25-3t

**J. A. Maedel, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Bratton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of June, 1908. **GEORGE C. GLICK**, 1508 E st. S. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,272. Administration. [Seal.] 25-3t

**Armond W. Scott, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Fannie E. Smyth, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of June, 1908. **CLARA H. SMYTHE**, 908 N. 29th st., Richmond, Va. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,327. Administration. [Seal.] 25-3t

**F. Edward Mitchell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Allen Sawtell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of June, 1908. **ANDREW NOLTE**, 19 Eye st. N. E. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,808. Administration. [Seal.] 25-3t

**Wilton J. Lambert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of William T. Solomon, Deceased.**  
 No. 12,008. Administration Docket —

Application having been made herein for re-probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William H. Underdue, it is ordered this 16th day of June, A. D. 1908, that Nicodemus Solomon and Josephine Solomon, and all others concerned, appear in said court on Thursday, the 23d day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **ASHLEY M. GOULD**, Justice. Attest: **Wm. C. Taylor**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 25-3t

**Legal Notices.****FOURTH INSERTION.**

**Sheehy & Sheehy, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of John T. Lewis, Deceased.**  
 No. 14,577. Administration Docket 37.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by A. Jackson Taylor, it is ordered this 10th day of June, A. D. 1908, that Oliver Lewis, W. Wesley Lewis, Georgianna Barnes, Elizabeth Middleton, Sarah Shreeves, Mary E. Lewis, James Lewis, Jefferson Lewis, Sybil Willet, Hilda Hinmon, William Lewis, John Harvey Lewis, Mary Richardson, Jennie Richardson, John Willet, and all others concerned, appear in said court on Tuesday, the 14th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **ASHLEY M. GOULD**, Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 24-4t

**FIFTH INSERTION.**

**Eugene A. Jones, Geo. C. Shinn, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Thomas R. Harney, Plaintiff; Unknown Heirs, Devisees and Alienees of Buller Cocke; Unknown Heirs, Devisees and Alienees of James Davidson; and Unknown Heirs, Devisees and Alienees of Richard Forrest. In Equity, No. 27,647.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lots numbered twelve (12) and thirteen (13) in square ten hundred and sixty-six (1066) in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 20th day of April, 1908, ordered that the unknown heirs, devisees and alienees of Buller Cocke; unknown heirs, devisees and alienees of James Davidson, and unknown heirs, devisees and alienees of Richard Forrest, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10

**Eugene A. Jones and Geo. C. Shinn, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Frank S. Collins, Plaintiff, v. Unknown Heirs, Devisees and Alienees of Harrietta Cornish, Deceased.**  
 In Equity, No. 27,646.

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to the east thirteen feet seven inches (13' 7") front on I street by the full depth thereof of lot lettered "D" in Frederick May's subdivision of part of square seven hundred ninety-seven (797), in the city of Washington, District of Columbia, as per plat of said subdivision recorded in book N. K., page 127, in the Office of the surveyor of the District of Columbia. On motion of complainant, by solicitor Eugene A. Jones, it is, this 20th day of April, A. D. 1908, ordered that the unknown heirs, devisees, and alienees of Harrietta Cornish, deceased, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10.

[Seal] **M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10.

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JULY 10, 1908

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### Liability of Fraudulent Grantee for Rent.

The case of First National Bank of Plattsmouth v. Gibson, decided recently by the Supreme Court of Nebraska (114 N. W., 777), involved an interesting question in the law of fraudulent conveyances. It was there held that where a conveyance of real estate is set aside as fraudulent at the suit of a creditor of the grantor and the land subjected to the lien of his judgment, but proves insufficient to pay the judgment, the fraudulent grantee may, in a proper proceeding, be compelled to apply on the judgment the rents and profits of the land which accrued while it was in his possession under the fraudulent conveyance.

### Transfer of Title by Formal Delivery of Deed.

In Hamlin v. Hamlin, recently decided by the Court of Appeals of New York, and reported in the New York Law Journal, the formal delivery of a deed by the grantor to the grantee is held to complete the transfer of the title, and no oral reservation of a contrary intention will defeat the effect of the delivery. Parol evidence is declared not to be admissible to show that the deed was executed and delivered simply to help the grantee temporarily and in case he needed money in his business. Casual remarks and conversations by the grantee to the effect that the grantor, his wife, was the owner of the property are not admissible as evidence to contradict the terms of the deed and defeat a title acquired by a formal

delivery of the instrument. Declarations by a grantee, to be admissible, must be such as characterize his possession, and must be made when pertinent and important upon the question of the actual ownership. They must rise higher than casual or conversational remarks; they must be made when he was called upon to make them and when the truth was required to be spoken.

### Electricity; Injuries Incident to Construction; Care Required.

In Cutler v. Putman Light and Power Company, decided by the Supreme Court of Connecticut (68 Atl., 1006), it appeared that defendant maintained its wires directly over the poles and wires of a street railway company. Decedent was a lineman in the employ of the railway company, and in the course of his employment climbed a pole to bore a hole in it near the eye bolt. He had no knowledge that defendant's wire was not properly insulated; and while so engaged in his duties, and by reason of the poor insulation, he received a shock from which he died in a few minutes. As to the care required in the control of electricity the court said:

"The exercise of that degree of care which the law terms 'ordinary care' required the use of very great care by the defendant in the construction, maintenance, and operation of its appliances for conducting its currents of electricity of high voltage. McAdam v. Central Railway and Electric Co., 67 Conn., 445, 447, 35 Atl. Rep., 341. In determining what precautions it should take against danger to human life by possible contact with its highly charged wires, it was bound to recognize the right of the railway company to maintain and use its poles and wires, and to consider the fact that the railway company's linemen were required in the performance of their duties to climb these poles for the purpose of maintaining and repairing the railway company's wires. Nelson v. Branford L. & W. Co., 75 Conn., 548-551, 54 Atl. Rep., 303. The defendant knowingly allowed its highly charged wire, the current from which caused Cutler's death, to hang so near to the pole upon which Cutler was working, and to span the wire of the railway company attached to it, that the railway linemen while working upon the pole were liable to accidentally come in contact with it. The defendant learned some weeks before the accident that one of these two sagging wires had come in contact with the span wire at this pole and that either from the insufficiency of these such a breaker ball as that used upon the span wire, or from its defective condition, it did not furnish an insulation against the current from the defendant's wire, and that the span wire became grounded when in contact with the defendant's wire. The trial court has pointed out how the danger of such contact with these wires by linemen might have been removed or lessened by the defendant. The trial court was justified in concluding that a proper construction or maintenance of the defendant's wires at this point had not been shown."

## Court of Appeals of the District of Columbia.

JOHN A. BENSON, APPELLANT,

v.

AULICK PALMER, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA, APPELLEE.

### HABEAS CORPUS; EXTRADITION; RES ADJUDICATA.

1. The rule that when a discharge has been granted on writ of habeas corpus the issues of law and fact involved are res adjudicata, and that the person so discharged can not lawfully be again arrested for the same cause, has no application when the discharge has been of a prisoner sought to be extradited.
2. Appellant, with others, was indicted in this District for violation of sec. 5440 R. S. Upon complaint under oath before a United States Commissioner in New York, to which complaint were attached copies of the indictment and of a bench warrant issued by the Supreme Court of this District, he was arrested, and upon examination was held by the commissioner for removal to this District. In habeas corpus proceedings, the United States Circuit Court for New York held that the record did not set forth facts tending to establish a conspiracy to commit an offense against the United States, and ordered his discharge. Subsequently he was arrested in this District upon a bench warrant issued by the Supreme Court of this District to answer the charge contained in the indictment. Claiming that the question of the invalidity of the indictment was res adjudicata by reason of the decision of the United States Circuit Court in New York, he filed a petition for a writ of habeas corpus. *Held*, that the proceeding in New York related solely to the question of appellant's removal to this District, and his discharge in that proceeding did not preclude his subsequent arrest and detention for prosecution in this District upon a bench warrant issued under the same indictment.

No. 1893. Decided June 9, 1908.

APPEAL by petitioner from a judgment of the Supreme Court of the District of Columbia, Habeas Corpus, No. 459, dismissing a petition for a writ of habeas corpus. Affirmed.

Mr. A. A. BIRNEY for the appellant.

Mr. STUART McNAMARA for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District of Columbia denying the petition of the appellant for a writ of habeas corpus. On February 17, 1904, the grand jury of the United States for the District of Columbia found an indictment against appellant and others charging a violation of the provisions of section 5440 of the Revised Statutes of the United States. On the 20th of February, 1904, one William J. Byrnes made a complaint under oath before one Shields, a United States commissioner for the southern district of New York, charging that the petitioner was then in said district, and was the identical person named in the said indictment pending in the District of Columbia, a copy of which indictment, together with a copy of the bench warrant of the Supreme Court of the District of Columbia issued thereon, were attached to the said complaint. On the same day Shields issued a warrant for the arrest of appellant. The warrant was executed by the United States marshal for the said District, and the appellant was committed to the custody of the marshal until an examination could be had before the commissioner.

On June 7, 1904, the commissioner made an order committing the appellant for trial in the Dis-

trict of Columbia, and remanding him to the custody of the said marshal until a warrant for his removal to the District of Columbia could be issued by the United States district judge for the southern district of New York. On the same day, appellant filed a petition for a writ of habeas corpus in the Circuit Court of the United States for the Southern District of New York. After alleging the circumstances relating to his arrest and commitment, appellant claimed that he was illegally restrained and denied his liberty upon "a written complaint of one William J. Byrnes which sought to charge your petitioner, together with Frederick A. Hyde and others, with a conspiracy to defraud the United States in violation of section 5440 of the United States Revised Statutes. That said complaint was made wholly upon information and belief, and the complainant's belief was stated to be based upon a copy of an indictment against your petitioner, Frederick A. Hyde and others, said to have been found in the Supreme Court of the District of Columbia at a criminal term thereof, on the 17th day of February, 1904." The petition further charged that the arrest and detention of appellant by order of the United States commissioner was without due process of law, and in violation of the Constitution of the United States, in that the complaint, alleged indictment and evidence, which constituted the sole authority for appellant's arrest and commitment, charge no crime against the United States and show no violation by appellant of the provisions of section 5440 of the Revised Statutes or any other statutes of the United States, but show affirmatively that no offense was committed by appellant upon which he could be tried in the District of Columbia. A writ of habeas corpus was allowed on the same day by the Circuit Court, and also a writ of certiorari directed to the United States commissioner to certify the record in the case before him to the said court. Return was made to each writ, and, on the 28th of July, 1904, the said Circuit Court ordered the discharge of the petitioner because, in its judgment, it appeared that the appellant was illegally held, for the reason the record before it did not set forth facts tending to establish a conspiracy to commit an offense against the United States. The United States attempted to take an appeal from the order discharging the appellant to the Circuit Court of Appeals for the Second Circuit. The appeal, however, was dismissed for want of jurisdiction.

No further attempt was made on the part of the officers of the United States to extradite the appellant. On May 26, 1905, the appellant, being found in the District of Columbia, was arrested upon another bench warrant issued under the same indictment. On April 6, 1908, his surety surrendered him in open court, and he was taken in custody by the appellee, the United States marshal for the District of Columbia. Appellant then presented to the Supreme Court of the District of Columbia a petition for a writ of habeas corpus claiming that his detention was based solely upon the indictment originally found against him, and that this indictment had been finally and conclusively adjudged by the Circuit Court of the United States for the Southern District of New York, having jurisdiction as well of the person of appellant as of the subject-matter of this proceeding before it, to state no crime against

the United States; that the judgment of said court concluded the power of the courts of the District of Columbia to hold appellant under said indictment; that appellant was being held to answer an infamous crime upon an indictment which had been declared by a court of competent jurisdiction to be insufficient and invalid, and that he was not again subject to arrest on account of said indictment. Upon hearing, an order was entered in the Supreme Court of the District of Columbia denying the prayer of appellant. From that order the case comes here on appeal.

The only question presented for our consideration is whether or not the discharge by writ of habeas corpus of appellant in New York from detention in an extradition proceeding under process issued upon a complaint filed before a United States commissioner to answer an indictment found against him in the District of Columbia, forbids his subsequent arrest and detention for the purpose of prosecution in said District upon a bench warrant issued under the same indictment. The United States District Court for the Southern District of New York had jurisdiction of the matter before it only for the purpose of extradition. It had no greater jurisdiction than was possessed by the United States commissioner who issued the warrant upon which appellant was detained. That warrant was the process upon which appellant was held. It was issued upon a complaint filed before the commissioner. The indictment filed in the Supreme Court of the District of Columbia, and the bench warrant issued thereon, were not the process upon which appellant was arrested in New York, but the evidence upon which the complaint was based. The indictment found against the appellant in the District of Columbia furnished the basis upon which he could there be arrested and tried for the offense charged. There alone could the merits of the case, the guilt or innocence of the accused, be determined. The proceeding in New York was based solely upon the complaint filed before the commissioner. It had nothing to do with the merits of the case, the guilt or innocence of appellant. It related solely to the question of his removal. The proceedings in New York were merely preliminary and ancillary to the proceedings in the District of Columbia.

If apprehended outside of the District of Columbia, the intervention of two processes was necessary to hold appellant for trial. One process was issued upon the complaint filed in New York, which was for the sole purpose of accomplishing his removal to the District of Columbia; the second process was the bench warrant issued upon the indictment under which he could alone be held in the District of Columbia after the process for removal had served the purpose of bringing him here. In fact, in this case only the second process was used. Appellant was arrested in the District of Columbia on a bench warrant issued upon the indictment subsequent to his discharge in New York. The intervention of the first process was not necessary to bring him within the jurisdiction of the trial court; hence, that court will not stop to inquire how appellant came before it, provided the process under which he is immediately held is sufficient to give it jurisdiction. Any action that may have been taken under the first process will have no more effect upon the jurisdiction of the trial court than would the

action of a committing magistrate. In both cases they are preliminary proceedings to bring persons accused of crime within the jurisdiction of the court empowered to try the charge on its merits. Hence, the discharge of appellant from the process under which he was held in the proceedings in New York has nothing to do with the process upon which he was subsequently arrested and held for trial in the District of Columbia. The inquiry into the sufficiency of the indictment was for the sole purpose of ascertaining if it set forth evidence upon which the complaint before the commissioner in the removal proceedings could be sustained; in other words, whether the indictment charged a crime against the United States, or, on its face, disclosed probable cause for the removal of appellant to the District of Columbia for trial.

It should be remembered that the question of whether or not appellant should be removed was not one to be determined alone from the indictment. It was to be decided upon the evidence offered in support of the complaint in the removal proceedings. The indictment was but a piece of evidence that might or might not be decisive of the issue of extradition. In fact, an indictment was not necessary at all in order to secure the removal of appellant. *Greene v. Henkel*, 183 U. S., 249; *Price v. McCarty*, 89 Fed., 84; *Pierce v. Creedy*, U. S., No. 357, October term, 1907 (not published). As was said by the court in *Greene v. Henkel*, 260: "The finding of an indictment does not preclude the Government under section 1014 from giving evidence of a certain and definite character concerning the commission of the offense by the defendants in regard to acts, times, and circumstances which are stated in the indictment itself with less minuteness and detail, and the mere fact that in the indictment there may be lacking some technical averment of time or place or circumstance in order to render the indictment free from even technical defects, will not prevent the removal under that section, if evidence be given upon the hearing which supplies such defects and shows probable cause to believe the defendant guilty of the commission of the offense defectively stated in the indictment." At thus clearly appears that the indictment is used only as evidence in support of the complaint in the removal proceedings.

It is well settled that a district judge of the United States may look into an indictment before issuing a warrant for the extradition of a prisoner to determine whether or not it charges a crime against the United States for which the accused may be tried in the jurisdiction where the indictment was found. Quoting further from the opinion in *Greene v. Henkel*, supra: "We do not, however, hold that when an indictment charges no offense against the laws of the United States, and the evidence given fails to show any, or if it appear that the offense charged was not committed or triable in the district to which the removal is sought, the court would be justified in ordering the removal, and thus subjecting the defendant to the necessity of making such a defense in the court where the indictment was found. In that case there would be no jurisdiction to commit nor any to order the removal of the prisoner." This simply announces a well settled doctrine that, where the indictment alone is relied upon as evidence in the removal proceeding, and it fails



to charge a crime against the United States, a warrant for the removal of the accused should not be issued; but, it will be observed that the court distinctly limits such interpretation of the indictment to the removal proceedings, and does not extend it to subsequent proceedings under the same indictment in the court having jurisdiction to try the case on its merits. In other words, such a finding concludes the proceedings for removal, but not for trial.

In the case of *in re Buell*, 3 Dill., 116, where it was sought to remove relator from the State of Michigan to the District of Columbia to answer to an indictment there found, Judge Dillon said: "Mere technical defects in an indictment should not be regarded, but a district judge who should order the removal of a prisoner when the only probable cause relied on or shown was an indictment, and that indictment failed to show any offense against the laws of the United States, or showed an offense not committed or triable in the district to which the removal is sought, would misconceive his duty and fail to protect the liberty of the citizen." It will be observed that the learned jurist carefully used the expression, "when the only probable cause relied on or shown was the indictment," implying not only that the indictment in such cases is used merely as evidence in support of the charge made in the complaint, but that other or additional evidence might be adduced in support of such charge. In that case, extradition was refused because of a failure of the evidence to support the complaint. We think the authorities will sustain our view that the certified copy of the indictment in this case could only be used as evidence in support of the charge made against appellant in the complaint filed in New York, and that the process upon which he was there arrested and held, and from which he was discharged, was issued upon the complaint, and not upon the indictment.

It is not the policy of our criminal jurisprudence that an accused shall be permitted to escape trial on the merits of the charge against him through a mere defect in the preliminary proceedings leading up to the trial. No discharge by writ of habeas corpus will operate as a bar to further proceedings in the same cause, unless the inquiry on the petition for the writ involves a full investigation into the merits of the case, the guilt or innocence of the accused. This is the distinction in the leading case relied on by counsel for appellant, *Chung Shee v. United States*, 71 Fed., 277. Chung Shee was the wife of a Chinese merchant in Portland, Oreg., who sought to enter the United States under the Chinese exclusion act. She was arrested, tried, and an order issued for her deportation. While she was held under said order she filed a petition for a writ of habeas corpus, and, on hearing, was discharged from detention. Subsequently she was arrested in Los Angeles, Cal., under the same act, and pleaded her former discharge as a bar to that proceeding. The court held her former discharge was a bar to further prosecution on the same charge, on the ground that her guilt or innocence had been determined by a competent tribunal, and that the inquiry in the original habeas corpus proceeding, of necessity, involved a full investigation of the merits of the case. The learned judge, in his opinion, clearly distinguishes the difference between the discharge of a prisoner upon habeas corpus in a preliminary matter and a dis-

charge on the merits of the case when he said: "The further argument of the Government in this connection is that the decision of a collector denying an alien admission into this country is similar to an order, upon preliminary examination, discharging or committing a person accused of crime. With this argument, we can not agree. The order of a committing magistrate does not purport to determine the question of innocence or guilt, and therefore the discharge of the accused, whether at the preliminary examination or a review upon habeas corpus does not, of course, bar subsequent inquiry, indictment, or trial. It was to this situation that the Supreme Court of South Carolina referred in the case of *State v. Fley*, 2 Brev., 338, where the court declare that it would be monstrous to say that the discharge of a prisoner upon habeas corpus shielded him from subsequent prosecution. The determination, however, of an alien's claim to enter the United States is wholly different. When the power and duty of so determining are committed to any officer, no matter whether such officer belongs to the executive or judicial branch of the Government, the decision of such officer is an adjudication of the right involved, namely, the right of the alien to enter the country, and such adjudication is final, unless the law expressly or impliedly provides for an appeal from or a review of the decision." This case clearly presents the distinction. If the inquiry on a petition for the writ of habeas corpus involves an investigation of the merits on commitment after trial by a court with full jurisdiction to investigate the question of the guilt or innocence of the accused, it is equivalent to a trial on the merits; it is a bar to any further proceedings on the same charge; but that is not the case at bar. The New York court had no power to pass upon the merits of the case. Its jurisdiction was limited to the mere independent, preliminary question of removal.

The rule that when a discharge has been granted on writ of habeas corpus the issues of law and fact involved are *res adjudicata*, and that the person so discharged can not lawfully be again arrested for the same cause, has no application when the discharge has been of a prisoner sought to be extradited. In the case of *Kurtz v. State*, 22 Fla., 36, the appellant Kurtz was a fugitive from New York. He was arrested in Florida, and released upon a writ of habeas corpus. Later he was re-arrested, and he sued out another writ of habeas corpus. The court refused to discharge him on this writ. On appeal, the Supreme Court in its opinion said: "Counsel also insists that the former discharges of Kurtz by the judge below had the force and effect of *res adjudicata* and that he could not be arrested a second time for the same charge. We have examined the numerous authorities submitted by counsel as well as others referred to in the text-books, and while it seems that in those States where a judgment of a court in a habeas corpus proceeding discharging or remanding to custody a prisoner is final, and a writ of error is allowed thereon, that the principle of *res adjudicata* is applicable, yet in none of these cases was the question of extradition involved. No case brought to our attention has decided that the principle applies where the discharge of the prisoner was from the custody of an officer holding him by virtue of a warrant of a resident governor, upon the requisition of the

governor of the State from which he had fled. They are all cases where the parties were restrained of their liberty for alleged crime by some local State law, or seeking discharge from the Army or Navy, both of which required a hearing and inquiry into evidence and a judicial determination of the facts and the law. The courts in a habeas corpus proceeding of this kind, where the prisoner is arrested for extradition, can not go into a trial of the merits of the cause. The proceeding is only an initiatory step to a trial in another State. As to the guilt of the prisoner, they are not allowed to inquire. Their judicial powers are limited to a determination on the sufficiency of the papers and the identity of the prisoner. If the prisoner is discharged, it will not absolve him from being rearrested on a new warrant issued by the governor. To the same effect are the cases of *Commonwealth v. Hall*, 9 Gray, 262, and *Bassing v. Cady*, 208 U. S., 386.

It is also well settled that a discharge upon a writ of habeas corpus from imprisonment on process issued upon an indictment is a bar to future arrest on the same process, but not to arrest and detention upon another process issued upon the same indictment. In the case of *Ex parte Milburn*, 9 Pet., 704, Milburn was imprisoned in the jail of the county of Washington, on a bench warrant issued by the Circuit Court of the United States for the District of Columbia to answer an indictment pending against him. He had been arrested on a former capias issued upon the same indictment, on which he gave a recognizance for his appearance. He did not appear, and the recognizance was forfeited; and a scire facias was issued against him and his sureties. At the same term another writ of capias was issued against him, which was returned non est inventus. Later, another writ of capias was issued, on which he was arrested, and from which arrest he was discharged on a writ of habeas corpus by the chief justice of the Circuit Court on the ground that the writ was improperly issued. Subsequently a bench warrant was issued by order of a majority of the judges of the Circuit Court, on which he was arrested and placed in custody. He applied for a writ of habeas corpus to the Supreme Court of the United States, which was refused. Mr. Justice Story announced the opinion of the court on this feature of the case in one sentence, as follows: "A discharge of a party, under a writ of habeas corpus, from the process under which he is imprisoned, discharges him from any further confinement under the process; but not under any other process, which may be issued against him, under the same indictment." This conclusively disposes of the case before us. There Milburn was discharged on a writ of habeas corpus from the preliminary process under which he was imprisoned to await trial on an indictment pending against him. Here appellant was discharged on a similar writ from a process issued upon a complaint in New York in a preliminary proceeding to subject him to trial on an indictment found in the District of Columbia. There Milburn was arrested and lawfully held upon another process issued against him upon the same indictment. Here appellant was arrested and is being tried upon another process issued against him upon the same indictment.

It may be suggested, however, that the indict-

ment in Milburn's case, and the other cases here cited, were not condemned for failure to charge a crime, and in that particular they are not in point with the one here under consideration. To hold, as was done in Milburn's case, that the court having jurisdiction of the subject-matter of the charge contained in the indictment has power to try the accused on process issued thereon, irrespective of a former discharge by writ of habeas corpus on another process in a preliminary proceeding, is equivalent to a declaration that the court ordering the discharge under such circumstances has no power to place any limitation whatever upon the jurisdiction of the court trying the case on its merits. We think the rule a sound one, and applying it to the case at bar, the trial court in the District of Columbia can proceed without regard to the action taken in New York in the removal proceedings.

It, therefore, being well settled that a discharge on habeas corpus prior to trial is not a bar to a subsequent indictment and trial upon the merits by a court having jurisdiction of the subject-matter of the offense charged (*Barbee v. Weather- spoon*, 88 N. C., 19; *ex parte Cameron*, 100 Ala., 395), it would certainly be extraordinary to hold that a court has power to indict and try an accused after discharge by habeas corpus in a preliminary proceeding, but that it could not try the accused on the same indictment pending against him at the time of his discharge. Such a declaration would be anomalous, for the same objection that could be made to an indictment in existence at the time of the discharge of the accused, could be interposed to any other indictment charging him with the same offense; hence, the result would be that the discharge would operate as a bar to any future prosecution for the same offense. It was beyond the jurisdiction of the court in New York to discharge appellant for mere formal defects in the indictment. *Pierce v. Creecy*, supra. He issued the writ on the broad ground that the indictment was bad in substance, yet counsel for appellant insist that he can not be tried on that indictment, but may be tried on another indictment containing the same charge, however slightly changed in verbiage. Any other indictment containing the same charge must, of necessity, be the same in substance as the one condemned, hence it is hard to conceive just how another indictment could be drawn containing the same charge that would not be subject to a similar objection.

Equally anomalous is the contention of counsel for appellant that the ruling of the circuit judge in New York is final and operates as a bar to further proceedings upon the same indictment. If that contention is correct, the reverse would be true, that, where an indictment, in extradition proceedings, has been sustained by the court ordering removal, the accused would be estopped from questioning the sufficiency or the validity of the indictment in the court having jurisdiction of the subject-matter of the offense charged. The mere statement of the conclusion to which the reasoning would lead refutes itself. Assaid by Mr. Justice Peckham in *Greene v. Henkel*, supra: "It follows also that a decision granting a removal under the section named (sec. 1014, R. S.), where an indictment has been found, is not to be regarded as adjudging the sufficiency of the indictment in law as against any objection thereto which may

subsequently be made by the defendants." Of course, the right of objection to the sufficiency of the indictment is reserved to the defendant in the court having jurisdiction to try the accused for the offense charged therein, and it logically follows that, if the decision of the judge granting the requisition is not conclusive upon the defendant, it can not, for the same reason, be conclusive upon the Government.

The judgment refusing the writ is affirmed with costs, and it is so ordered.

Affirmed.

JOSEPH EVANS, PLAINTIFF IN ERROR,  
v.  
UNITED STATES, DEFENDANT IN ERROR.

POTOMAC RIVER; UNLAWFUL FISHING; RIGHTS OF  
CITIZENS OF VIRGINIA.

1. The territory now embraced within the District of Columbia is coextensive with that included in the cession from Maryland, and extends to the high watermark of the Potomac River on the southern or Virginia shore. Congress has never relinquished the title or control thus acquired.
2. Citizens of Virginia possess no vested rights to fish in the waters of the Potomac River in this District that are not subject to its police regulations.
3. Congress, in the exercise of the plenary power conferred by the Constitution to legislate for this District, had power to enact section 896 of the Code, making it unlawful to fish with nets in the waters of the Potomac River and its tributaries in this District, and such statute applies as well to a citizen of Virginia fishing in the river from the southern shore as to a citizen of the District fishing from the northern shore.
4. The compact of 1785 between Maryland and Virginia, by which certain rights, including that of fishing in the Potomac River, were granted to citizens of Virginia, was never in force in this District.

No. 1790. Decided June 9, 1908.

IN ERROR to the Police Court of the District of Columbia to review a judgment convicting the defendant of a violation of section 896 of the Code. Affirmed; Mr. Chief Justice Shepard dissenting.

Mr. R. WALTON MOORE, Mr. CRANDALL MACKEY, and Mr. D. S. MACKALL for the plaintiff in error.

Mr. D. W. BAKER and Mr. STUART McNAMARA for the United States.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This case comes here on writ of error from a judgment of the Police Court of the District of Columbia. Plaintiff in error was prosecuted in the Police Court upon an information wherein it was charged that the defendant, "on the 19th day of May, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the District aforesaid, and within the jurisdiction of this court, did then and there unlawfully fish with a certain contrivance, commonly known as and called a dip net, in the waters of the Potomac River within the District of Columbia; against the form of the statute in such case made and provided, and against the peace and Government of the United States of America." The statute, under which defendant was prosecuted is section 896 of the Code. The portion which relates to the present case provides as follows: "It shall not be lawful for any person to fish with fyke net, pound net, stake net, weir, float net, gill net, haul seine,

dip net, or any other contrivance, stationary or floating, in the waters of the Potomac River and its tributaries within the District of Columbia."

The evidence discloses that the plaintiff in error, at the time of the commission of the offense charged, was standing on a rock on the Virginia shore opposite to the District of Columbia. The rock was above the high watermark of the Potomac River, and the plaintiff in error was fishing with his dip net in the river, dipping the net into the water below high watermark. The plaintiff in error testified that, at the time of his arrest, he was a citizen of the State of Virginia and a resident of Alexandria County, and had been in the habit of fishing in the Potomac River from the Virginia shore from time to time for several years.

When the taking of testimony was concluded, plaintiff in error moved the court to discharge him upon the grounds which have been made the basis of this writ of error. The court overruled his motion, and found him guilty of a violation of the above section of the statute, and from this judgment he comes here upon writ of error.

The assignments of error are as follows:

"1. The Police Court erred in refusing to rule upon the whole evidence that the defendant should be discharged and acquitted.

"2. In declining to rule as matter of law that the defendant had a right to fish from the Virginia shore in the Potomac River.

"3. In refusing to rule as matter of law that said section 896 of the Code had no application to the defendant.

"4. And in declining to rule that said section 896 was unconstitutional and void."

It seems essential to a clear determination of this inquiry to refer briefly to the respective rights of the States of Maryland and Virginia in the waters of the Potomac River. On June 20, 1632, Charles I granted to Cecilius Calvert, second Baron of Baltimore, and first Lord Proprietary of the Province of Maryland, all the territory in said Province. By the terms of the charter, the grant embraced the Potomac River, the islands therein, and the soil under it, to high watermark on the southern or Virginia shore. On September 27, 1680, King James II, by royal patent, granted to Lord Culpepper the territory lying south of the Potomac River known as the Northern Neck of Virginia. In relation to these grants, it was said in the case of *Morris v. United States*, 174 U. S., 196: "That the territory and title thus granted to Lord Baltimore, his heirs and assigns, were never divested by any valid proceedings prior to the Revolution; nor was such grant affected by the subsequent grant to Lord Culpepper. The record discloses no evidence that, at any time, any substantial claim was ever made by Lord Fairfax, heir at law of Lord Culpepper, or by his grantees, to property rights in the Potomac River or in the soil thereunder, nor does it appear that Virginia ever exercised the power to grant ownership in the islands or the soil under the river to private persons. Her claims seem to have been that of political jurisdiction."

It has been conclusively adjudged that the charters granted by the different monarchs of the Stuart dynasty, of territory in America, conveyed to the grantees both the territory described and the powers of government, including the navigable waters and the soil under them. These passed to the patentees in trust for the benefit of the com-

munities to be established within the bounds of said grants. After the Revolution, the rights of the English Crown and Parliament became vested in the States, and the people themselves became sovereign. In them became vested for their common use, the navigable waters and the soil thereunder, subject only to rights surrendered by the States to the General Government. *Martin v. Waddell*, 16 Pet., 367.

Owing to a controversy between Maryland and Virginia regarding the boundary as fixed by these two charters with respect to the Potomac River, a compact was entered into between the two States in 1785, which, among other things, provided:

"Seventh. The citizens of each State, respectively, shall have full property in the shores of the Potomac River, adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements, so as not to obstruct or injure the navigation of the river; but the right of fishing in the river shall be common to and equally enjoyed by the citizens of both States: provided, that such common right be not exercised by the citizens of the one State to the hindrance or disturbance of the fisheries on the shores of the other State; and that the citizens of neither State shall have a right to fish with nets or seines on the shores of the other.

"Eighth. All laws and regulations which may be necessary for the preservation of fish, etc., shall be made with the mutual consent and approbation of both States."

It will be observed that, by this compact, certain rights, among which was that of fishing in the Potomac River, were granted to the citizens of Virginia, but nowhere does it appear that Maryland, by its terms, express or implied, granted away any title to the river or the soil under it. The limitation contained in section 8 of the compact related only to legislation affecting the specific privileges therein granted, and not to any property interest in the river. While the privilege of fishing secured to the citizens of Virginia may be regarded in a limited sense as an incorporeal property right, or a mere easement, it is one that could be divested at any time by the joint act of the sovereignties bound by the compact. In other words, the property right exists not in the river or in the soil under it, but in the privileges granted by the compact, so long as the States, the parties, continue the agreement in force. This applied equally, both to citizens of Virginia generally and to those owning lands adjacent to the Potomac River. This compact continued in force until the award of 1877, hereafter referred to, except as modified by provisions of the constitution and the cession of the District of Columbia.

The District of Columbia was created originally from territory ceded by Maryland and Virginia. A brief inquiry into the legislation by which this was accomplished is deemed essential to a clear understanding of the question here involved. The Constitution, article 1, section 8, clause 17, authorized Congress to acquire by cession of particular States, for the seat of Government, a territory not exceeding ten miles square. Both Maryland and Virginia were anxious to grant this territory. In November, 1788, the general assembly of Maryland passed an act which provided "That the representatives of this State in the House of Rep-

resentatives of the Congress of the United States, appointed to assemble at New York on the first Wednesday of March next, be, and they are hereby, authorized and required on the behalf of this State to cede to the Congress of the United States any district in this State not exceeding ten miles square, which the Congress may fix upon and accept for the seat of government of the United States." Acts of assembly, 1788, chap. 46, Kilty's Laws of Maryland. The following year Virginia passed an act entitled, "An act for the cession of ten miles square or any lesser quantity of territory within the State to the United States in Congress assembled for the permanent seat of the General Government." This act, as well as the Maryland act, provided that the cession should be in full and absolute right and exclusive jurisdiction as well of the soil as of persons residing or to reside therein, providing, however, for the full protection of the property rights of individuals residing therein at the time of the cession. 13 Hening, chap. 32.

Congress accepted these offers by an act approved July 16, 1790 (1 Stats. L., 130), which authorized the President to select a site for the seat of government on the banks of the Potomac River. Pursuant to this authority, President Washington on March 30, 1791, issued a proclamation describing the territory selected as follows: "Beginning at Jones Point, being the upper cape of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running in a direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line ten miles for the first line; then beginning again at the same Jones Point and running another direct line with a right-angle to the first across the Potomac ten miles for the second line; then from the terminations of the said first and second lines, running two other direct lines of ten miles each, the one crossing the Eastern Branch aforesaid and the other the Potomac, and meeting each other in a point." Further history of the acquisition of the District of Columbia by the United States is unnecessary. The territory, thus acquired included parts of the States of Maryland and Virginia lying, respectively, on the north and south banks of the Potomac River. Included within this area is the spot where plaintiff in error was fishing at the time of his arrest.

The compact of 1785 never was in force in the District of Columbia. It was not a consideration in the acts of cession, either as to soil or the protection of the vested rights of citizens within the district ceded. It was not essential that it should be, as the entire river within the District of Columbia was under the control of the General Government. The citizens of the District of Columbia on both shores enjoyed equal rights with respect to it. By the respective acts of cession Maryland and Virginia relinquished their joint interests in and control over that portion of the river within the bounds of the District of Columbia. It was within the power of the States, under the compact, acting within the limitations of the Constitution, to jointly abolish or change its terms at any time. When they ceded a portion of their territory, including a portion of the river, to the United States, the legislative power that they possessed passed immediately to Congress; and Congress could do anything, in the exercise of its police power in the

regulation of fishing in the Potomac River within the District, that they could have done. Congress, possessing this power, could legislate without respect to the terms of the compact, and the compact could not be invoked against any such act of Congress. In the case of *Georgetown v. Canal Co.*, 12 Pet., 96, the court said:

"The compact made in the year 1785, between Virginia and Maryland, was made by the two States, in their character as States. The citizens, individually, of both commonwealths, were subject to all the obligations imposed, and entitled to all the benefits conferred by that compact. But the citizens, as such, individually, were in no just sense the parties to it; those parties were the two States, of which they were citizens. The same power which established it, was competent either to annul or modify it. Virginia and Maryland, then, if they had retained the portions of territory respectively belonging to them on the right and left banks of the Potomac, could have so far modified this compact as to have agreed to change any or all of its stipulations. They could by their joint will, have made any improvement which they chose, either by canals along the margin of the river, or by bridges or aqueducts across it, or in any other manner whatsoever. When they ceded to Congress the portion of their territory, embracing the Potomac River, within their limits, whatsoever the legislatures of Virginia or Maryland could have done by their joint will, after that cession, could be done by Congress, subject only to the limitations imposed by the acts of cession. We are satisfied, then, that the act of Congress, which granted the charter to the Alexandria Canal Company, is in no degree a violation of the compact between the States of Virginia and Maryland, or of any rights that the citizens of either or both States claimed as being derived from it." If the compact, with respect to fishing, ever was accepted as a condition of cession, which is inconceivable, it has long since been repealed and rendered obsolete by the various acts of Congress relating to the regulation of fishing in the Potomac River within the District of Columbia, notably, the act here under consideration.

But, it is contended that, by the act of retrocession by which Virginia received back the territory she had ceded to the United States, she again acquired all the rights she possessed at the time of the cession, including her rights under the compact of 1785. This act, passed July 9, 1846 (9 Stats. L., 35), provided, among other things: "That, with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction over the same be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction as well of soil as of persons residing and to reside thereon." The United States was not a party to the compact of 1785, either originally or by subsequent acceptance of its terms. At the time of the retrocession, Maryland was not present at the point of controversy, and there was no one connected with the transaction upon whom Virginia would lay claim to a revival of the terms of the compact. At the time Virginia ceded her portion of the District of Columbia to the United States,

she ceded certain described territory. It extended to the high watermark on the south side of the Potomac River, which was the boundary line of Virginia, as fixed by the grant from the English Crown. The easements and privileges she possessed in the river under the compact were destroyed by the cession to the United States; and having been lost, they could not be revived by the mere reconveyance of the territory ceded, unless expressly re-created in the act of retrocession. Regarding the easements and privileges granted in the compact, the act of retrocession is silent. There being no express revival, there could be no revival by implication. *Greenwood v. Met. El. R'y Co.*, 58 N. Y. Super. Ct., 482; 12 N. Y. Supp., 99; *Hennesy v. Murdock*, 17 N. Y. Supp., 276; *Washburn on Easements*, 693.

In the year 1874, for the purpose of settling a controversy in relation to the boundary between the States of Maryland and Virginia, the legislatures of the two States agreed upon the submission of the matter to a board of arbitrators. In 1877, the report of the arbitrators was accepted by both States, and, in 1879, approved by Congress (20 Stats. L., 481). Congress, in approving the award, expressly provided: "Nothing therein contained shall be construed to impair or in any manner affect any right of the jurisdiction of the United States in and over the lands and waters which form the subject-matter of the said agreement or award." The section of the award pertinent to this inquiry reads as follows: "Fourth: Virginia is entitled not only to full dominion over the soil to low watermark on the south shore of the Potomac, but has a right to such use of the river beyond the low watermark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper use by it of Maryland, agreeably to the compact of 1785." It is unnecessary for us to consider at length the terms of this award, for it can not in any way affect this inquiry.

It is insisted by counsel for plaintiff in error that Congress, by the approval of this award, accepted its terms and granted to Virginia the same rights in the waters of the Potomac River within the District of Columbia that were granted to it in the waters outside of said District. Long prior to this Congress had ceded back to Virginia the territory originally ceded by her to the United States. The right of control over the Potomac River within the District had been settled so far as Virginia was concerned. The title of the United States, extending to the high watermark of the Potomac River on the Virginia shore, had been vested in Lord Baltimore by the English Crown, and had descended from him to the State of Maryland, and, from the State, by act of cession to the United States. No jurisdiction or control over the river thus acquired had ever been relinquished by Congress. The approval of the award by Congress was necessary under the provision of the constitution prohibiting one State from making a compact or agreement with another without the consent of Congress. It was only as a result of this necessity that Congress became connected with this dispute between the two States. By this approval, Congress had under consideration only the matters in controversy between Maryland and Virginia. That dispute

was limited to that part of the Potomac River extending between the two States, and not to that portion of the river lying between the District of Columbia and Virginia. Maryland had no power to arbitrate regarding the river in the District of Columbia. She lost all control and property right in that portion of the river at the time of the cession of the District. Neither State, in its subsequent legislation relating to the award, assumed to regard it as including the river in the District of Columbia. Hence, Congress in approving the award, in no way committed the District to its terms or conditions.

We are of the opinion, therefore, that the territory now embraced within the District of Columbia is coextensive with that included in the cession from Maryland. Whatever title Maryland possessed in the soil became vested in the United States. Maryland at that time, as we have observed, unquestionably owned the soil to the high watermark of the Potomac River on the southern or Virginia shore. Congress has never relinquished the title or control thus acquired. No such construction can be placed either upon the act of retrocession to Virginia, or upon the act of approval of the award between Maryland and Virginia in 1879. It follows that citizens of Virginia possess no vested rights to fish in the waters of the Potomac River in the District of Columbia that are not subject to its police regulations. The act, under which plaintiff in error was convicted, is one that Congress had the power to enact in the exercise of the plenary power conferred upon it by the constitution to legislate for the government of the District of Columbia. It applies to the Potomac River and its tributaries in the District of Columbia. It applies the same to a citizen of Virginia fishing in the river from the southern bank as to a citizen of the District fishing from the northern shore.

The judgment of the Police Court is affirmed with costs, and it is so ordered.

**Affirmed.**

Mr. Chief Justice SHEPARD dissenting:

My reasons for dissent in this case, briefly stated on account of the pressure of business at the close of the term, are these:

There is no doubt that the right of the State of Maryland in and to the Potomac River extended to high watermark on the Virginia shore. By the terms of the seventh clause of the agreement of 1785, Maryland made two grants. The first gave to the citizens full property in the shore, adjoining their lands, with all emoluments and advantages thereto belonging, and the privilege of making wharves and improvements. This grant is of the nature of an easement; but its effect is not involved. The second grant was a general right of fishing in the waters of the river, belonging to Maryland, not dependent upon or appurtenant to the ownership of lands on the adjacent shore. This does not create an easement but a license of profit. Such a license is known to the common law as a profit à prendre. As said by Chancellor Walworth: "A profit à prendre in the land of another, when not granted in favor of some dominant tenement, can not properly be said to be an easement, but an interest or estate in the land itself." *Post v. Pearsall*, 22 Wend., 425, 533. The right to hunt on lands, to fish in waters, or to use waters for various purposes is a profit à prendre, and while it may be annexed as an appurtenance

to land by the terms of a particular grant, it may be, and usually is, granted in gross, in which case it becomes an interest in the land or water itself. *Wickham v. Hawker*, 7 M. & W., 63, 79; *Ewart v. Graham*, 7 H. L. C., 331, 345; *Webber v. Lee*, 9 Q. B. Div., 315, 318; *Pearce v. Keator*, 70 N.Y., 419, 421; *Tinicum Fishing Co. v. Carter*, 81 Pa. St., 21, 39; *Cobb v. Davenport*, 33 N. J. L., 223, 225; *McCotter v. Town Council*, 21 R. I., 43, 47; *Goodrich v. Burbank*, 12 Allen, 459, 461; *Hall v. City of Ionia*, 38 Mich., 423; *Water Power Co. v. Electric Co.*, 43 S. C., 154, 171; *Columbia Water Power Co. v. Columbia, etc.*, Ry. L. & P. Co., 172 U. S., 475, 489.

In the light of these principles, I can not agree in the conclusion, as stated in the opinion of the court, that "Nowhere does it appear that Maryland, by its terms, express or implied, granted away any title to the river."

When Maryland ceded her part of the territory comprising the District of Columbia, the United States took the same subject to this grant. The following year, the State of Virginia ceded part of her territory. I do not doubt that Virginia could at any time regrant, or extinguish the fishery right in the waters of the Potomac, which she acquired from Maryland. But this interest in the water so acquired was not appurtenant to the land ceded to the United States and did not pass by the grant of sovereignty thereover. Nor do I find the fact that the same passed by implication.

But, assuming that it was included in the cession, I am of the opinion that it was embraced in the act of retrocession, which embraces "all that portion of the District of Columbia ceded by the State of Virginia, and all rights and jurisdiction therewith ceded over the same and hereby ceded and forever relinquished to the State of Virginia in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon." Act approved July 9, 1846 (9 Stat., 35, 36). The United States concluding, as the preamble to that act recites, that the ceded territory was unnecessary to any of their uses and purposes, undertook to, and, in my opinion, did regrant to the State of Virginia everything that had been formerly ceded by her to them. The intention was to restore to Virginia, in its entirety, all that had been obtained from her by the cession, and to reestablish the statutes existing at and before that date. This right to control the right of fishing is not inconsistent with the paramount right of the United States in navigable streams, so long as it may be exercised without obstructing navigation. *McCready v. Virginia*, 94 U. S., 391, 395.

I am of the opinion, therefore, that the judgment of the Police Court should be reversed, with direction to dismiss the complainant.

Embezzlement by Agent.—The fact that an agent is entitled to retain as his compensation a certain percentage of the fund collected for his principal is held, in *Com. v. Jacobs*, 31 Ky. L. Rep., 921, 104 S. W., 345, 13 L. R. A. (N. S.), 511, in case he refuses to pay over any of the fund, but uses it all for his own benefit, not to take the act out of the operation of a statute providing punishment for an agent who shall convert to his own use money of his principal which has come into his possession.



# Court of Appeals of the District of Columbia

JEROME A. JOHNSON ET AL., APPELLANTS,  
v.

IRA T. BRYANT ET AL.

No. 1888. Decided June 2, 1908.

APPEAL by defendants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 24,729, in a suit by judgment creditors to subject real estate to the satisfaction of their judgments. Affirmed.

Mr. W. J. LAMBERT, Mr. EDWARD McLEAN, and Mr. R. H. YEATMAN for the appellants.

Mr. M. N. RICHARDSON and Mr. J. A. COBB for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a decree of the Supreme Court of the District in a judgment creditor's bill, subjecting lot 36, square 194, in this District, to the lien of complainant's respective judgments aggregating \$2,880, with interest from November 25, 1902.

In about 1876 Jerome A. Johnson, one of the appellants herein, purchased a lot in this District for which he agreed to give not to exceed \$1,400. He was then a clerk in one of the departments with a salary of \$1,200 a year. The year following he married Anna M. Johnson, who joins with him in this appeal. In 1883, having completed payment for the lot, it was conveyed by deed to Johnson and held by him until December 5, 1902, when he sold it for \$5,000 cash. Prior to and at the time he was a stockholder and director in the Capital Savings Bank, which bank, on October 23, 1902, was placed in the hands of receivers. Soon thereafter suits were instituted against the stockholders, including Johnson. There was some question as to whether Mrs. Johnson was not also liable because of two shares of stock which she held. Fearing judgments against them appellants, in June, 1903, purchased said lot 36 and procured one Robert H. Bundy, who was a cousin of Mrs. Johnson, to take the record title. Bundy and Johnson went to the bank where Johnson withdrew \$1,700 by a check to his own order and handed it to Bundy, who used it in making a down payment on the purchase price of the lot. Conveyance was made to Bundy who at once recorded his deed. At the same time he executed a conveyance of the lot to Mrs. Johnson, but this deed was not recorded until April 27, 1907, after the filing of the amended bill herein alleging title in Mrs. Johnson. At the same time Bundy purchased this property for the Johnsons he executed a deed of trust on the property to secure his note to Mrs. Sprague, the grantor of the property, for \$2,500. This note was not given in good faith and was immediately cancelled and given to Mrs. Johnson. The deed of trust securing it, however, was duly recorded.

It is contended that Mrs. Johnson after her marriage contributed from \$1,000 to \$1,500 towards the purchase price of the original lot from money which she earned as a dress-maker; that Johnson in consideration of such contribution agreed that she should receive half the proceeds of the sale of the lot; that she consented to the sale of the lot on condition that she should receive

one-half of the proceeds to reimburse her for said advancements and in lieu of her dower; and that she permitted her husband to retain the entire proceeds of the sale because she had no bank account at the time.

The trial court found that said lot 36 was not the property of the defendant Anna M. Johnson, but was the property of her husband Jerome A. Johnson, and with that conclusion the record compels us to agree. The facts and circumstances surrounding the entire transaction are pregnant with suspicion, and the only evidence that Mrs. Johnson ever contributed anything towards the payment on the original lot was her own testimony and that of her husband. In view of the contradictory nature of their testimony, little weight can be attached to it. Johnson testifies that he did not pay to exceed \$1,400 for the lot. It was purchased in 1876 and paid for in full in 1883, and yet Mrs. Johnson testifies that she contributed from \$1,000 to \$1,500 towards its payment after her marriage to Johnson in 1877. There is not a scintilla of evidence that she was conducting a dress-making establishment during that time. Her own testimony and that of her husband is to the effect that her mother was conducting such an establishment, and that she was employed by her. Moreover, if Mrs. Johnson had contributed towards the payment for this lot, it is altogether likely that it would have been conveyed to her and her husband jointly and not to him alone. We are fully convinced that Johnson was the sole owner of this lot.

It is next contended that the decree is erroneous because it deprives Mrs. Johnson of her right to the value of her dower interest in the lot sold. It is undisputed that she had a dower interest in this lot, and she testifies that before joining her husband in the deed of conveyance, he promised to pay her one-half the proceeds in satisfaction of her dower interest and in consideration of payments which she had made on the lot. Johnson's testimony is to the same effect. Had he given her a note, we would uphold it to the extent of her dower interest. *Sykes v. Chadwick*, 18 Wall., 141. In view of the fact that she was clearly entitled to dower, we hold that under this testimony she was entitled to the value of that interest out of the proceeds of sale. The record shows, however, that Johnson received \$2,897.69 net for said lot; that he deposited \$2,500 in his own name. Out of this sum \$1,700 was applied towards the purchase of said lot 36. The record shows that Johnson deposited to his wife's credit \$281.68 of the balance, which she received. This leaves \$916.01 yet to be accounted for. Johnson does not attempt to explain what became of this money, and, in view of the circumstances surrounding the transaction, we are not convinced that the dower interest of Mrs. Johnson has not been fully extinguished.

The decree must be affirmed with costs, and it is so ordered. Affirmed.

Party Walls.—An obligation to pay for the use of a party wall on the division line is upheld in *Spalding v. Grundy*, 31 Ky. L. Rep., 951, 104 S. W., 293, 13 L. R. A. (N. S.), 149, although the wall was made without any agreement to this effect, and the person adopting it has acquired his title since the wall was built.

**Landlord and Tenant.**

A lease of a tenement is held in *Darnell v. Columbus Show Case Co.* (Ga.), 58 S. E., 631, 13 L. R. A. (N. S.), 333, to carry with it an implied grant of the right to light and air from the adjoining land of the landlord, where the situation and habitual use of the demised tenement are such that the right to light and air is essential to the beneficial enjoyment of the leased tenement.

The principle that a stranger injured by a defect in leased property which the landlord has undertaken to keep in repair may, to avoid circuity of action, maintain an action directly against the landlord, is held, in *Miles v. Janvrin* (Mass.), 82 N. E., 708, 13 L. R. A. (N. S.), 378, not to apply in favor of the wife of the tenant, since she can not maintain an action against the tenant.

Upon wrongful abandonment by a tenant of leased premises before the expiration of the term, it is held, in *Higgins v. Street* (Okla.), 92 Pac., 153, 13 L. R. A. (N. S.), 398, that the landlord may, at his election, at once enter and terminate the contract, and recover the rent due up to the time of abandonment; or may suffer the premises to remain vacant and sue on the contract for the entire rent; or may give notice to the tenant of a refusal to accept a surrender, when such notice can be given, and sublet the premises for the unexpired term for the benefit of the lessee to reduce his damages.

The novel question of the right of a tenant to lease the outside wall of the building to a third person for advertising purposes is decided against the tenant in *Louisville Gunning System v. Parks*, 31 Ky. L. Rep., 917, 104 S. W., 331, 13 L. R. A. (N. S.), 587.

**Evidence.**

In order to make competent evidence of the conduct of bloodhounds in trailing one accused of crime it is held, in *State v. Dickerson* (Ohio), 82 N. E., 969, 13 L. R. A. (N. S.), 341, that a preliminary foundation must be laid therefor by showing, by someone having personal knowledge of the facts, that the particular dog so used had been trained and tested in trailing human beings, and, by experience, had been found reliable in such cases, and that the dog so trained and tested was, in the instance involved, laid on the trail at a point where the circumstances tended to show that the guilty party had been, or upon a track which the circumstances indicated to have been made by him.

One rendered hysterical by an accident, who had been assisting in bringing to consciousness her companion who was rendered unconscious by it, is held, in *McCord v. Seattle Electric Co.* (Wash.), 89 Pac., 491, 13 L. R. A. (N. S.), 349, not to be bound by a statement made by the latter, immediately on regaining consciousness, as to the cause of the accident, although she does not contradict it.

A presumption of negligence on the part of a carrier is held, in *McGinn v. New Orleans R. & Light Co.*, 118 La., 811, 43 So., 450, 13 L. R. A. (N. S.), 601, not to follow the simple and unexplained fact of an accident resulting in the injury of a passenger, but the question is one to be determined by the surrounding circumstances,

and, when they are of such a character as to withdraw any presumption of fault or negligence against the carrier, it is held that it should not be held responsible. A note to this case, in *L. R. A. (N. S.)*, reviews the other authorities on presumption of negligence from injury to passenger.

**Deeds.**—One who signs, seals, and delivers a deed, though not named therein as a grantor, is held, in *Sterling v. Park* (Ga.), 58 S. E. 828, 13 L. R. A. (N. S.), 298, to be still bound as a grantor, and the deed is held to be operative as a conveyance of his estate.

While the weight of authority is undoubtedly contrary to the doctrine laid down in *Johnson v. Grenell*, 138 N. Y., 407, 81 N. E., 161, 13 L. R. A. (N. S.), 551, which holds that a deed describing the premises by reference to lot number as laid down on a map made and filed by the grantor, and by its location on the southeast shore of an island in a river, adding the words, "The lot 126 feet front and 68 feet deep, supposed to contain 60 by 100 feet, the same more or less"—carries the title to the entire width of a boulevard 50 feet wide, shown upon such map, extending to the water's edge along the southerly shore of the island, and intervening between the lot in question and a river, with the riparian rights attaching thereto, its conclusion is, nevertheless, supported by decisions in several jurisdictions.

**Estoppel.**—A creditor who, by reason of a mistake in his debtor's credits, surrenders a written guaranty of the indebtedness at a time when the debtor is solvent, is held, in *Marshall, Field & Co. v. Sutherland* (Iowa), 113 N. W., 770, 13 L. R. A. (N. S.), 576, to be estopped from subsequently, after discovering the mistake, and the debtor has become insolvent, attempting to enforce the liability of the guarantor.

**Insurance.**—Insurance procured by an agent on goods of his principal, to whom he is, by contract, unconditionally liable for them, is held, in *Bradley v. Brown* (Neb.), 112 N. W., 331, 13 L. R. A. (N. S.), 152, to belong to the agent exclusively, or his creditors, in case of his insolvency, to the exclusion of the principal. This particular phase of the subject seems to be novel; but a note to the case, in *L. R. A. (N. S.)*, treats the general question of the principal's right to insurance taken in the name of the agent, and shows that, as a general rule, such insurance inures to the principal's benefit, if the policy shows that the agent is not the sole owner.

**Trover.**—The right of the payee of checks to maintain trover against one who takes them upon the indorsement of the former's special agent without authority to make the indorsement is sustained in *Blum v. Whipple*, 194 Mass., 253, 80 N. E., 501, 13 L. R. A. (N. S.), 211.

One who procures another who is mentally incapacitated to transact business, to draw checks upon her bank account, and obtains the money thereon from the bank, is held, in *Meyer v. Doherty* (Wis.), 113 N. W., 671, 13 L. R. A. (N. S.), 247, to be liable to the drawer, or to her personal representatives in the event of her death, as for a wrongful conversion of the money so obtained, the same as if he had obtained it directly from her.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Marion Duckett & Son, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maria P. Dare, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of July, 1908. ELIZABETH B. SOTHORON, 21 A st. S. E.; ELLA BELT BERRY, 21 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,380. Admn. [Seal.] 28-31

Chas. H. Bauman, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Lavinia V. Staples, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 31st day of July, 1908, at 10 o'clock, A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1908. CHARLES SCHAFER, Executor, by Chas. H. Bauman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,523. Administration. [Seal.] 28-31

Coldren & Fenning, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of July, 1908. FREDERICK A. FENNING, 4125th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,224. Administration. [Seal.] 28-31

Chas. H. Cragin, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Allen Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of July, 1908. CHARLES H. CRAGIN, 321 4th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,179. Administration. [Seal.] 28-31

### Legal Notices.

John B. Larner, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

J. Edward Chapman, Complainant, v. the Unknown Heirs, Allenees, and devisees of Charles G. Faleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, Deceased, Defendants.  
Equity, No. 27,858.

The object of this suit is to establish the title of the complainant by adverse possession to original lot numbered twenty-five (25), in square numbered four hundred and ninety-nine (499), of the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of July, 1908, ordered that the defendants, the unknown heirs, allenees, and devisees of Charles G. Faleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, all deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-31

Edward L. Gies, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Magdalena Eichner, Deceased.  
No. 15,357. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Michael A. Mess, it is ordered this 8th day of July, A. D. 1908, that the unknown heirs at law and next of kin of said Magdalena Eichner, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

Erskine Gordon, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Anna R. Green, Deceased.  
No. 15,306. Administration Docket—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William A. Gordon and J. Holdsworth Gordon, it is ordered this 8th day of July, A. D. 1908, that Eadie G. Gandell and Rose Queenberry, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

Irwin B. Linton, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Sarah S. Condit Smith, Deceased.  
No. 15,365. Administration Docket—

Application having been made herein for probate of the last will and testament and two codicils of said deceased, and for letters testamentary on said estate by Irwin B. Linton, it is ordered, this 8th day of July, A. D. 1908, that Mary L. Whitney and Isabelle de Milt MacCreery, and all others concerned, appear in said court on Monday, the 10th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Legal Notices.**

C. C. James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert T. Pywell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1908. MARTEA E. PYWELL, 1001 Eleventh st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,108. Administration. [Seal.] 28-31

R. E. Mattingly, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding Equity Court.  
Lorena B. White, Complainant, v. James A. White  
and Mary Gavin Flynn, Defendants.  
Equity No. 27,855.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 7th day of July, A. D. 1908, ordered that the defendants, James A. White and Mary Gavin Flynn, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with in case of default. Provided that this order be published once a week for three successive weeks in The Washington Herald and The Washington Law Reporter. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-31

[Seal]

Wm. E. Ambrose, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William C. Drury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of July, 1908. HOSEA B. MOULTON, Washington Loan and Trust Building; WM. E. AMBROSE, 458 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,308. Administration. [Seal.] 28-31

H. Randall Webb, Attorney  
In the Supreme Court of the District of Columbia.  
Olivia Scala v. Heirs of George Beall, Unknown.  
No. 27,890. Equity Doc. —.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece and parcel of real estate, to wit: Lots numbered forty-five (45) and forty-six (46) and the eastern one (1) foot and (7) inches of lot numbered forty-four (44), or so much of said lot forty-four (44) as was embraced within the original boundaries of lot numbered fifteen (15) in a subdivision of lots numbered fourteen (14) and fifteen (15) in square numbered nine hundred and forty-nine (949) in Washington City, District of Columbia, as per plat recorded in Liber 25 at page 103 in the office of the surveyor for the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

[Seal]

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

William A. McKenney, Attorney.  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Amanda D. Allen, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,194. Administration. [Seal.] 28-31

Raleigh Sherman, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of William A. Wroe, Deceased.  
No. 15,113. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Raleigh Sherman, it is ordered, this 7th day of July, A. D. 1908, that Mrs. Adele Keane, Bertie Wroe, Ida Wroe, Daisy Wroe, Mary Kellar, Nellie Willett, Evelyn Willett, Marcel Radabaugh, Ida Rowly, and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

H. Randall Webb, Attorney  
In the Supreme Court of the District of Columbia.  
Jerome Hurst v. Heirs of George Beall, Unknown.  
No. 27,889. Equity Doc. —.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece of real estate, to wit: Lot numbered forty-seven (47) in subdivision of certain lots in square numbered nine hundred and forty-nine (949) in the city of Washington, District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

Chapin Brown, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. S. Denham, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. LEWIS C. DENHAM, Executor, by Chapin Brown, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,498. Administration. [Seal.] 28-31

**Legal Notices.****SECOND INSERTION.**

**Crandal Mackey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Catharine T. Allen, Complainant, v. Luke Welch,**  
**Michael Welch, Clara C. McCauley, Francis J.**  
**Welch, Lillian E. Welch, Bessie Welch, and Mary**  
**Welch, In Equity, No. 26,878.**

Crandal Mackey, trustee in the above entitled cause, having reported that he has sold all the real estate involved therein, namely, the north seventeen feet front by depth thereof of lot No. 11, in square No. 16, in the city of Washington, District of Columbia, known as premises No. 833 26th st. N. W., unto John G. Slater, agent, for the sum of four hundred and thirty-five dollars (\$435), it is, this 30th day of June, A. D. 1908, ordered that the said sale be confirmed unless cause to the contrary be shown on or before the 30th day of July, A. D. 1908. Provided this order be published once a week for three successive weeks before said last mentioned day

in The Washington Law Reporter. By the  
 [Seal] Court: ASHLEY M. GOULD, Justice. A true  
 copy. Test: J. R. Young, Clerk, by Wms. F.  
 Lemon, Asst. Clerk. 27-3t

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Burr Vickers**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **FREDERICK A. FENNING**, Century Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 27-3t

**Lawrence Hufty, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Cara H. Wilson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of June, 1908. **THEODORE D. WILSON**, 52 Broadway, N. Y. City; **MALCOLM HUFTY**, 416 5th st. N. W., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,709. Administration. [Seal.] 27-3t

**Blair & Thom, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Alice Peyton**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **JOHN B. PEYTON**, 111 C st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,352. Administration. [Seal.] 27-3t

**Harry G. Kimball, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **George D. Seely**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **ALICE H. SEELY**, care of Harry G. Kimball, 416 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,313. Administration. [Seal.] 27-3t

**Legal Notices.**

**William A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Thomas C. Sullivan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-3t

**Henry C. Davis, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of **Margaret J. Badger**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **26th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of June, 1908. **CHARLES J. BADGER**, Annapolis, Md.; **ANNIE M. ELLIOTT**, Marine Barracks, Wash., D. C. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-3t

**A. A. Hoehling, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles S. Wilson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **17th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of June, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by **William D. Hoover**, Second Vice-President; **A. A. HOEHLING, JR.**, 1416 F st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,342. Administration. [Seal.] 27-3t

**Douglas & Douglas, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **George W. Povey**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **26th day of March, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **W. H. RONSAVILLE**, 1340 New York ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,153. Administration. [Seal.] 27-3t

**Wm. L. Pollard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Randolph Brown**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **ELIZA SAUNDERS**, 516 3d st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 27-3t

**Legal Notices.**

**Brandenberg & Brandenberg, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward F. Droop, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of June, 1908. ANNA A. DROOP, 1455 Harvard st.; EDWARD H. DROOP, 925 Pa. ave.; CARL A. DROOP, 925 Pa. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,304. Administration. [Seal.] 27-3t

**Edwin C. Dutton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Wheeler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. EDWIN C. DUTTON, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,345. Administration. [Seal.] 27-3t

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of H. Maria Patton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. ROBERT W. PATTON, Box 210, Lewistown, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,362. Administration. [Seal.] 27-3t

**William A. Donoh, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Addie R. Perkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1908. ELENA SMITH CHAPMAN, 610 H. st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,225. Administration. [Seal.] 27-3t

**W. Mosby Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Samuel C. Redman et al. v. Aaron H. Potts et al.**  
**Equity, No. 27,099.**

John C. Weedon and W. Mosby Williams, trustees, having reported sale at public auction of part of the real estate decreed to be sold in this cause, to wit, 34 lots in the subdivision known as "Garfield Heights" and in said decree particularly described, situate in the District of Columbia, to M. Rebecca Reid, for the sum of six hundred and forty dollars (\$640), it is, this 28th day of June, 1908, ordered that said sale will be ratified and confirmed on the 27th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. By the Court: ASHLEY M. GOULD, Justice.  
 A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 27-3t

**Legal Notices.**

**J. Wilmer Latimer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Dixon Fullerton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1908. ANGUS L. FULLERTON, Chillicothe, Ohio. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,217. Administration. [Seal.] 27-3t

**THIRD INSERTION.**

**Thomas Walker, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Rebecca S. Nichols, Deceased.**

**No. 15,291. Administration Docket.—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Louise S. Nichols, it is ordered this 25th day of June, A. D. 1908, that John H. Nichols, Howard E. Nichols, Clarence H. Nichols, Effie J. Curry, Lula Fernandez, Franklin O. Nichols, Hugh H. Nichols, Bernard Nichols, Carroll Nichols, Ernest Nichols, Rudolph Nichols, Mary Nichols, Mrs. Mary Nichols, and all others concerned, appear in said court on Tuesday, the 28th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-3t

**Irving Williamson, Solicitor**

**In the Supreme Court of the District of Columbia.**  
**Susie A. Taylor v. William Thornton Taylor and Kate M. Myers, Otherwise Called Kate M. Taylor.**

**No. 27,740. Equity Doc. 61.**

The object of this suit is to obtain an absolute divorce in favor of said Susie A. Taylor from her husband, said William Thornton Taylor, on the ground of adultery, the said Kate M. Myers, otherwise called Kate M. Taylor, being named as co-respondent. On motion of the complainant, it is, this 28th day of June, 1908, ordered that the defendants, William Thornton Taylor and Kate M. Myers, otherwise called Kate M. Taylor, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk, 28-3t

**Hugh T. Taggart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Michael McKenna, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 13th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 19th day of June, 1908. JOHN C. O'DONNOGHUE, by Hugh T. Taggart, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,341. Administration. [Seal.] 28-3t



**Legal Notices.**

**John J. Hemphill, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of James A. Bates, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of June, 1908. HENRY C. BATES, 29th st. and Fifth ave. New York City, N. Y. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,808. Admn. [Seal] 26-3t

**Sheehy & Sheehy, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Margaret Nugent, Deceased.**  
**No. 15,824. Administration Docket 38.**

Application having been made herein for probate of the last will and testament and codicil of said deceased, and for letters testamentary on said estate, by F. J. O'Connell, it is ordered this 19th day of June, A. D. 1908, that Patrick Nugent and the unknown heirs at law and next of kin of Margaret Nugent, deceased, and all others concerned, appear in said court on Monday, the 27th day of July, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. ASHLEY M. GOULD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. 26-3t

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel Becker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK A. FENNING, Century Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,351. Administration. [Seal.] 26-3t

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George Boegeholz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 22d day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 22d day of June, 1908. FREDERICK W. BERGMAN, Suitland. Md. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,339. Administration. [Seal.] 26-3t

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Massachusetts, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Jane L. Stone Harrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of June, 1908. BENJAMIN S. MINOR, Colorado Building; HORACE B. STANTON, 608 State st., Boston, Mass. Attest: M. J. GRIFFITH, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,248. Administration. [Seal.] 26-3t

**Legal Notices.**

**W. L. Pollard and M. N. Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court for Said District.**

**George A. Scott, Complainant, v. Henry Schroeder et al., Defendants.**  
**Equity No. 27,627.**

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18th street by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in liber 829, folio 89, et seq., of the land records of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof, for more than twenty-two years. On motion of the complainant, it is this 23d day of June, A. D. 1908, ordered that the defendant, Henry Schroeder, if living, or if dead, the unknown heirs, devisees, and devisees, if any, of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 26-5t

**SIXTH INSERTION.**

**Eugene A. Jones, Geo. C. Shinn, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Thomas R. Harney, Plaintiff, Unknown Heirs, Devisees and Alienees of Buller Cocke; Unknown Heirs, Devisees and Alienees of James Davidson; and Unknown Heirs, Devisees and Alienees of Richard Forrest. In Equity, No. 27,647.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to all of original lots numbered twelve (12) and thirteen (13) in square ten hundred and sixty-six (1666) in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 20th day of April, 1908, ordered that the unknown heirs, devisees and alienees of Buller Cocke; unknown heirs, devisees and alienees of James Davidson, and unknown heirs, devisees and alienees of Richard Forrest, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington

[Seal] Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10

**Eugene A. Jones and Geo. C. Shinn, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Frank S. Collins, Plaintiff, v. Unknown Heirs, Devisees and Alienees of Harritta Cornish, Deceased.**  
**In Equity, No. 27,646.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish title in complainant by adverse possession to the east thirteen feet seven inches (13' 7") front on I street by the full depth thereof of lot lettered "D" in Frederick May's subdivision of part of square seven hundred ninety-seven (797), in the city of Washington, District of Columbia, as per plat of said subdivision recorded in book N. K., page 127, in the office of the surveyor of the District of Columbia. On motion of complainant, by solicitor Eugene A. Jones, it is, this 20th day of April, A. D. 1908, ordered that the unknown heirs, devisees, and alienees of Harritta Cornish, deceased, cause their appearance to be entered herein on the first rule day occurring after the expiration of three months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald.

[Seal] M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. may 1, 8; June 5, 12; July 3, 10.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JULY 17, 1908

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### Street Railway Transfers.

In the case of Morrill v. Minneapolis Street Railway Company, decided by the Supreme Court of Minnesota (115 N. W., 395), it appeared that plaintiff received a transfer from the car on which she was riding to another, the conductor of which refused to honor it; and upon her refusal to pay another fare ejected her. The court held that the transfer was merely a new certificate, not a new contract; that it was the duty of the defendant company to issue correct transfers; that as a passenger is not bound to examine them, the plaintiff was entitled to continue her journey notwithstanding an error of the conductor issuing the transfer.

### Bills and Notes; Notice to Transferee of Corporate Paper.

In Ward v. City Trust Company, decided by the Court of Appeals of New York on April 14, 1908, and reported in the Central Law Journal, it appeared that a bank, in making a loan to a corporation, delivered to the president of the corporation a cashier's check payable to the corporation. The president indorsed the check in his official capacity and delivered it to a trust company in payment of an individual loan made to himself and another. It was held that the form of the check was notice to the trust company that the president of the corporation was using corporate property to pay his personal debt, in apparent violation of its rights, the effect of which notice was to put the trust company on inquiry to de-

termine whether the president of the corporation was authorized so to use its funds both as against the corporation and its creditors. Where a cashier's check tendered in payment of a debt was sufficient on its face to excite suspicion as to the right of the party tendering it to so use the check, the creditor, although accepting the check without inquiry, is still entitled to the rights of a bona fide holder if reasonable inquiry would have disclosed facts which would have dispelled the presumption of illegal use. This benefit, however, carries with it the burden of responsibility for such unfavorable facts as reasonable inquiry would have discovered in relation to the defect that made the inquiry necessary. It was further held that a corporation, even by joint action of all its officers, directors, and stockholders, can not authorize the voluntary application of the corporation's assets to payment of the individual debts of its officers to the prejudice of creditors of the corporation.

In a note to the decision, under the heading "Notice and Inquiry," the Central Law Journal says:

"The principal case contains a most thorough review of the principle of law applicable, with citation of leading authorities. The case deals with principles of law firmly established, but sometimes difficult of application. One point emphasized especially by the court is that the directors of a corporation are trustees of its assets, for the benefit, first, of its creditors, and then of its stockholders. Therefore, even though all the stockholders agree to the proposed misapplication of the fund, he who takes the assets without giving full consideration to the corporation, if he has notice, actual or constructive, or if put on inquiry, must look further and see that the transaction is not a fraud on the creditors of the corporation. As is well said, a corporation can not, even with the consent of all its stockholders, give away its property, if there is not enough left to pay its debts. Trustees in general are held to a very strict account, and the tendency is to hold the directors of a corporation to the same strict accountability as any other trustee, not only as to creditors, but as to nonconsenting stockholders. In any other case a trustee would hardly have been permitted to take a check payable to the beneficiary, and apply the amount to his own debt, where the party receiving the check had knowledge as in this case, that such payment was sufficient to nearly wipe out the trust fund.

"Where there is anything in the transaction which would indicate to the prudent man that the holder of paper is under some limitations, then inquiry must follow. See 7 Cyc. Commercial Paper, 951, and authorities there cited.

"It was held in Mathis v. Barnes, 1 Ind. App., 164, 27 N. E. Rep., 308, that one taking an assignment of a note from a guardian which he knows belong to the ward, in payment of the private debt of the guardian, acquires no title.

"In Johnson v. Suburban Realty Co., 62 Mo. App., 156, plaintiff purchased a note from an officer of the defendant corporation, the consideration being in part a release of an individual indebtedness of such officer. It was there held, as in the principal case, that the purchaser of the paper having had knowledge that the note belonged to the corporation, was not a purchaser in good faith."

**Court of Appeals of the District of Columbia.**

**WILLIAM E. SPEIR AND THE TITLE GUARANTY COMPANY OF SCRANTON, PENNSYLVANIA, APPELLANTS,**

**v.**

**UNITED STATES TO THE USE OF THE TRADESMEN'S TRUST COMPANY.**

**PUBLIC CONTRACTS; BONDS TO SECURE PERFORMANCE; SUIT BY MATERIAL MEN IN NAME OF UNITED STATES.**

1. The board of commissioners of the Soldiers' Home are officers of the United States acting as its agents in the management of a public establishment of a special character. The buildings erected for the home are public buildings, and in making contracts therefor the commissioners act as agents for the United States.
2. A contract for such buildings should be in the name of the United States, acting through the commissioners; but the fact that, by inadvertence, such a contract was made in the name of the commissioners does not change its essential character.
3. That a bond given to secure performance of such a contract and conditioned, as required by the act of August 13, 1894, for prompt payment to persons furnishing labor or materials in the prosecution of the work, by inadvertence names the board of commissioners as obligees instead of the United States, will not preclude a suit thereon in the name of the United States to the use of a party furnishing materials, etc., to recover the amount due therefor.
4. In such a case the rule applicable in the case of private bonds under seal, that a person not a party thereto can not sue at law thereon, though it may have been intended for his benefit, denied application.

No. 1891. Decided June 2, 1903.

APPEAL (specially allowed) from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,483, entered upon a demurrer to the declaration in an action on a bond. Affirmed.

Mr. PHILIP WALKER for the appellants.

Mr. NATHANIEL WILSON and Mr. C. R. WILSON for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an action begun on May 23, 1907, in the name of the United States to the use of the Tradesmen's Trust Company, upon a bond given to secure the performance of a contract by William E. Speir for the erection of a building on the Soldiers' Home grounds in the District of Columbia.

The declaration, in several counts, alleged the following facts: That on November 21, 1903, William E. Speir entered into a formal contract with the United States, acting by and through the board of commissioners of the Soldiers' Home, to furnish all the labor and material required for the complete construction of the addition to the Barne's Hospital at the United States Soldiers' Home. Said contract, attached to the declaration recites that it was entered into by and between said Speir and the board of commissioners for and on behalf of the United States Soldiers' Home. The said Speir undertook to complete the said building, for the sum of \$184,891. The contract was signed by said Speir, and for the board of commissioners by H. S. Hawkins, "brigadier-general, governor, president of the board," with seals attached. On June 4, 1904, the said Speir, as principal, and the Title Guaranty and Trust Company of Scranton, Pennsylvania, bound themselves unto the board of commissioners of the

United States Soldiers' Home in the penal sum of \$75,000. The condition of the bond after reciting the contract aforesaid, reads as follows:

"Now, therefore, if the above bounden William E. Speir, heirs, executors, or administrators, shall, and will, in all respects, duly and fully perform and observe all and singular the covenants, conditions, and agreements in and by the said contract agreed and covenanted by the said William E. Speir, to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States Soldiers' Home as during the original term of the same, and shall promptly make full payments to all persons supplying him labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise to remain in full force and virtue."

The declaration further alleges that, on December 3, 1903, the said Speir contracted with A. F. McCarthy & Company for the supply of certain materials and labor in the prosecution of the contract aforesaid, agreeing to pay them the sum of \$40,000. That the Tradesmen's Trust Company became surety to said Speir for the said A. F. McCarthy & Company for the faithful performance of said contract by the latter. That in August, 1904, the said A. F. McCarthy & Company made default and abandoned the said contract. That at request of said Speir, and in performance of its obligation aforesaid, the said Tradesmen's Trust Company carried out and completed the contract of said McCarthy & Company, expending therein the sum of \$22,492.15. That the balance of \$17,507.85 remains due by said Speir on account of said contract. And that the said Speir, having failed and refused to pay the same, a certified copy of the bond given by him as aforesaid was procured for the institution of this suit against him and his surety therein, The Title Guaranty and Trust Company, of Scranton, Pennsylvania.

The defendants demurred to this declaration. Their demurrers were overruled, and a special appeal from the order overruling the same has been allowed.

The act approved August 13, 1894, in accordance with which it is alleged the bond sued upon was required and executed, reads as follows:

"Hereafter any person or persons entering into a formal contract with the United States for the erection of any public building or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required, before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor and furnishing affidavit to the department under the direction of which said work is being, or has been prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond, upon which said person or persons supplying such labor and materials shall

have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit and to prosecute the same to final judgment and execution. Provided, that such action and its prosecutions shall involve the United States in no expense." 28 Stat., 278.

1. The first proposition of the appellants is thus stated: "The contract secured by the bond is not 'a formal contract with the United States for the erection of a public building, or the prosecution and completion of a public work.'" We are of the opinion that this contention is not well founded.

The Soldiers' Home was provided for by act of Congress approved March 3, 1851. By act of March 3, 1847, \$500,000 had been appropriated for the return of disabled and indigent soldiers of the Mexican war, of which there remained, unexpended, the sum of \$55,000. This sum, and \$118,791.19, that had been levied by General Scott upon the city of Mexico, and paid into the treasury of the United States, were appropriated as a fund for the establishment of the home. Subsequent laws added to this fund monthly deductions from soldiers' pay, and the proceeds of fines and forfeitures of pay under decrees of courts martial. By act of 1883, all funds of the home not needed for current use were required to be deposited in the United States Treasury, to the credit of the home, as a permanent fund, and to draw interest at the rate of three per centum per annum. No part of the principal fund can be withdrawn save by resolution of the board of commissioners, stating the necessity, with the approval of the Secretary of War. The officers of the home consist of officers of the Army selected by the President. This board of commissioners are required to make annual reports to the Secretary of War, giving a full statement of all receipts and disbursements, which shall be supplemented by other statements if required by the Secretary, and all shall be transmitted to Congress.

Section 4817, R. S., authorized the board of commissioners, with the approval of the President, to procure a site for the home and to have buildings erected for the uses of the same. The act of March 3, 1883, amended this by providing that no new building shall be erected or additional ground purchased, nor any expenditure exceeding \$5,000 be made until the action of the board shall be approved by the Secretary of War.

The act of January 16, 1891, authorizes the Treasurer of the United States to receive and keep, subject to checks of the treasurer of the home, all funds then under control of the treasurer of the home, or that may hereafter be furnished, or in any manner come into his possession for use in defraying the current expenses of maintenance. The title to the land on which the building is situated is in the United States. Relating to this question of taking title to the lands for the Soldiers' Home, Attorney-General Crittenden, on July 12, 1851, gave an opinion to the Secretary of War in which he said:

"In my opinion the commissioners are not a corporation. They can not sue or be sued. They are but public officers and agents to administer the funds appropriated by the act, and to raise funds out of the deductions of pay of noncommissioned officers, musicians, artificers, and privates in the Army, and out of any donations of moneys or property made by any person or persons for the benefit of the asylum and for the

uses, purposes, and charities expressed in the act. They are like the former Commissioners of the Sinking Fund, the Commissioners of Indian Affairs, Commissioners of Pensions, or Commissioners of the Public Buildings. This asylum is a public establishment, under the control of the Government, acting by the Secretary of War.

"The deed for the site purchased for the asylum should be taken to the United States." 5 Op. Atty. Gen., 398.

We have no doubt of the soundness of this opinion, and there has been no subsequent legislation changing the conditions then existing. The board of commissioners of the Soldiers' Home are neither officers of a corporation, nor trustees of an independent trust, but officers of the United States acting as their agents in the management of a public establishment of a special character.

The buildings erected for the home are, therefore, public buildings, and in making contracts therefor they act as the agents and representatives of the United States. The statutes regulating the erection of public buildings generally, that are relied on by the appellants as determining what are public buildings of the United States (R. S., sections 3733, 3734, 3663, and 5503) have no application to buildings erected on the grounds of the Soldiers' Home, which are provided for by other statutes, and paid for, not out of special appropriations of public money, but out of funds permanently appropriated by Congress for the maintenance of the home.

The proper form of this contract should have been in the name of the United States, acting through its agents, the board of commissioners, as was the case in the contract that was involved in *Marble Co. v. Burgdorf*, 13 App. D. C., 506, 507; 27 Wash. Law Rep., 35. But the fact that, through inadvertence, the United States were not named in the contract does not, in our opinion, change its essential character. The board of commissioners, as public agents, were acting by legal authority in the line of their duty as such and not for themselves. Their contract was on account of and for the benefit of the United States which they represented. *Hodgson v. Dexter*, 1 Cranch, 345, 363; *Peak v. U. S.*, 16 App. D. C., 415, 420; 28 Wash. Law Rep., 438; *Sheets v. Selden*, 2 Wall., 177, 187. Both contracting parties fully understood that the building to be erected was a public building of the United States. For that reason the board of commissioners exacted, and the contractor and his surety executed the bond for the protection of the furnishers of labor and material required in all such cases by the act of August 13, 1894.

2. The bond, which is under seal, follows the form of the contract and names the board of commissioners as obligees, and not the United States. For this reason it is contended that an action does not lie thereon in the name of the United States. It is the rule of law in this District that in the case of a private bond under seal, a person not a party thereto, though it may have been intended for his benefit, can not maintain an action at law thereon. *Willard v. Wood*, 135 U. S., 309, 313; *Whelpley v. Ross*, 25 App. D. C., 207, 214; 33 Wash. Law Rep., 371.

But this is not the case of a contract between private persons, and an ordinary bond to secure its performance, determinable by the terms in

which their intention has been expressed, and the ancient rule of the common law above stated. The building contracted for was a public one on which no lien could be fastened. The contractor and his surety knew this, and that they were dealing, in fact, with the United States through their agents. They intended to give the bond required by the statute in all such cases. This bond was required not only for the security of the United States, but also for the protection of third persons who might thereafter furnish labor and material to the contractor, for which they could have no lien upon the building. These persons had nothing to do with the form of the bond. Their rights accrued later, and are founded in the statutory provision for their security. So far as their rights are concerned, the obligees are not named because of any interest the United States might have, but simply that there might be a promisee in whose name an action might be brought, if necessary thereafter, on behalf of the real parties in interest who might furnish labor and materials to the contractor, in reliance upon the statutory provision for their security.

The defense on the ground that the United States were not expressly named as the obligees is a purely technical one. By the terms of the statute they should have been named as principals in the contract and obligees in the bond. Notwithstanding their omission by mistake on the part of their representatives in the transaction, the statutory condition must be considered as read into and made a part of the bond. *School Furniture Co. v. McGuire*, 46 W. Va., 328, 331. By the terms of the statute the United States should have been formally named as principals in the contract and obligees in the bond. The recitals of both and the very object of their execution plainly show that the omission of the name of the United States was a simple mistake. A distinction between such a bond and one executed to private persons, in respect of the right to use the name of the intended obligee as real or nominal plaintiff, seems to be established by authority. *Ihrig v. Scott*, 5 Wash., 584, 585. In that case a bond securing a contract for the erection of a school building, containing a condition required by statute for those furnishing labor and materials to the contractor, had been made payable by mistake of the school directors to them instead of the State. In passing upon a similar objection to that made in this case, the court said:

"That a mistake in the naming the obligees is not a fatal defect in a bond which is executed pursuant to the requirements of the statute in the interests of the public, when, notwithstanding such error, it clearly appears from the bond, taken as a whole, that it was intended to be such a one as is required by the statute, is fully established by the authorities. *State v. Wood*, 51 Ark., 205; *Bay Co. v. Brock*, 44 Mich., 45. The simple fact, then, of the want of a proper obligee in this bond is not fatal to it, if from its terms the object for which it is executed appears. Even a superficial examination will show such to be the fact. No one can read the bond in the light of the statute above referred to without at once coming to the conclusion that in executing it by the principal and sureties and the acceptance thereof by the proper officers of the school district, there was an intention on the part of all to provide the security required by said statute, in the interest of such as

might thereafter by virtue thereof become entitled to protection."

The appellee in this case had the right to rely, as it did, upon the condition which the statute required to be incorporated in the bond. It was not a party to the original undertaking and had nothing to do with the formal mistake.

The contract and bond containing the condition important to it having been approved by the Secretary of War as required by law, it naturally supposed that it was in conformity with all the requirements of the law. The contractor and his surety evidently executed the bond under that belief, and with that object. To exempt them from liability to perform their express obligation, and to deny the appellee its unquestioned statutory right, on account, solely, of this informality or mistake of the bond in respect of naming the proper obligees in whose name alone the action can be prosecuted under the statute, would be an act of great injustice that ought not to be tolerated. As was said by Judge Cooley in an analogous case approved and relied upon in *Ihrig v. Scott*, supra: "The obligee is not named because of any interest in the condition, but that there may be a promisee in whose name to bring suit; nothing of importance depends upon its being the State rather than the county; the condition is the important requirement, and the naming of an obligee is the merest formality possible, so that if the instrument omitted to name one . . . the substance of the undertaking would still remain." *Bay Co. v. Brock*, 44 Mich., 45, 48.

We are of the opinion that the court below did not err in overruling the demurrer; and the order to that effect will be affirmed with costs, and the cause remanded for trial in due order of proceeding. It is so ordered.

Affirmed.

#### Carriers.

Wilful abuse of a passenger by the carrier's agent, without physical injury, is held insufficient to make the carrier liable for the passenger's mental suffering and humiliation. *St. Louis, I. M. & S. R. Co. v. Taylor*, 84 Ark., 42, 104 S. W., 551, 13 L. R. A. (N. S.), 159. But the annotation of the case in L. R. A. (N. S.) shows that in most instances the courts have followed the contrary rule, and allowed such recovery.

The mutuality of a contract to furnish cars to a shipper is sustained in *Clark v. Ulster & D. R. Co.*, 189 N. Y., 93, 81 N. E., 766, 13 L. R. A. (N. S.), 164, and also in the other cases cited in the annotation in L. R. A. (N. S.).

The ordinary rule of "look and listen" is held, in *Atchison, T. & S. F. R. Co. v. McElroy* (Kans.), 91 Pac., 785, 13 L. R. A. (N. S.), 620, not to apply where a railroad company stops a passenger train where other tracks are between it and the depot platform, since, under such circumstances, it is held that passengers and other persons rightfully there have a right to assume that they will be protected from danger by the company.

The tender by a passenger of more than the correct fare, coupled with a demand for change as a precedent condition to giving up the money tendered, is held, in *Louisville & N. R. Co. v. Cottingham*, 31 Ky. L. Rep., 871, 104 S. W., 280, 13 L. R. A. (N. S.), 624, which seems to be a case of first impression on this question, not to be a good tender.

**Court of Appeals of the District of Columbia.****THE NEW YORK CONTINENTAL JEWELL  
FILTRATION COMPANY, APPELLANT,**

v.

**JACOB KARR.****FOREIGN CORPORATIONS; SERVICE OF PROCESS.**

1. Statutes providing a method for service of process for the purpose of bringing individuals or corporations into court must be strictly followed, and the court is powerless to declare a service of process valid where there has not been a strict compliance with the requirements of the statute.
2. Where it appeared that, at the time suit was brought, the defendant, a foreign corporation, which, theretofore had been engaged in certain construction work in this District, had closed its office here and removed its property, having contracted with the T. company, a separate, independent corporation, to perform the work which it had engaged to do in this District, it was held that service of process on persons who, although formerly in the employ of defendant in this District, were, at the time of such service, not in its employ but in the employ of the T. company, was not sufficient, under section 1537 of the Code, to bring the defendant into court; and an order of the court below, overruling a motion to vacate the service of process, reversed.

No. 1888. Decided June 2, 1908.

**APPEAL** (specially allowed) from an order of the Supreme Court of the District of Columbia, at Law, No. 49,445, overruling a motion to vacate a service of process. Reversed.

Mr. JAMES H. HAYDEN for the appellant.

Mr. SAMUEL MADDOX, Mr. H. PRESCOTT GATLEY, and Mr. J. A. MAEDEL for the appellee.

Mr. Justice VAN ORSDER delivered the opinion of the Court:

This case comes here on special appeal from an order of the Supreme Court of the District of Columbia overruling a motion of appellant company to vacate the marshal's return of service of summons upon said company. It appears that appellee brought suit against appellant, a foreign corporation, and the Philadelphia, Baltimore & Washington Railroad Company for damages to his property alleged to have been sustained as a result of the construction, by appellant, of certain tunnels forming part of the terminals of said railroad in the city of Washington. On January 8, 1908, summons was served on one J. H. Mills. The marshal's return stated that Mills was assistant superintendent of the appellant company. On January 10, 1908, another summons was served on one Thomas Ball. The return of service stated that Ball was a watchman in the employ of appellant.

Appellant, thereafter, appeared specially, and moved the court to quash the service for the reason, "first, that the defendant is a foreign corporation, which at the time of the said alleged service upon it, was not doing business in the District of Columbia, nor transacting business therein, and did not have any place of business in the said District or any officer, agent or employee therein; second, that the defendant at the said time had no place of business in the said District, nor any officer, agent or employee therein; and that neither the said John H. Mills, nor the said Thomas Ball, was at the time of the above mentioned service upon him an officer, agent, or employee of the defendant; and, third, that even if the said John H. Mills and Thomas

Ball had been officers, agents or employees of the defendant within the meaning of the act of Congress approved February 1, 1907 (34 Stat. L., 874), and of section 1537 of the Code of Laws of the District of Columbia, the above mentioned service of process upon them, and the above mentioned service upon each of them, was void for the reason that the said act of Congress and said section of said Code, as applied to a foreign corporation, having no place of business in the said District of Columbia, or any officer or agent resident therein, are unconstitutional and void, because, if enforced, they would deprive the said defendant of its property without due process of law." This motion was heard on affidavits filed by the parties, and testimony taken in open court.

It appears that between 1903 and September, 1907, appellant was engaged in constructing certain tunnels for the Philadelphia, Baltimore and Washington Railroad Company in the city of Washington. During the prosecution of this work, Mills was employed by appellant as a foreman, and Ball was employed as a laborer. The contract, under which appellant constructed the tunnels, among other things, provided, that, "after the completion of said tunnels," the appellant was "to repair the streets, avenues, sidewalks, and alleys which may be interfered with by the construction of the same to the condition in which they are at present to the satisfaction of the Commissioners of the District of Columbia, within sixty days after the date when said tunnels shall have been completed;" and "at its own cost and expense to take care of and provide all necessary falsework, machinery, and appliances and labor for sustaining, guarding, removing, changing, or altering all water mains and gaspipes, sewers, passenger railway tracks and railway, telephone, electric light, and other conduits, and any other lawful obstruction which it may encounter in doing the work upon the tunnels, and also for supporting and sustaining the streets, avenues, sidewalks, and alleys over said tunnels and all buildings and structures thereon and traffic thereover, and also agrees to obtain from the proper authorities of the District of Columbia all necessary permits to make any changes which may be necessary in said streets, avenues, sidewalks, and alleys;" and "to erect lights, barriers, and so forth." The tunnels were completed in September, 1907, but the work of restoring the streets was not completed at that time.

Shortly after the completion of the tunnels, the appellant employed the Tunnel Concrete Company, another foreign corporation, to observe the condition of the falsework left by appellant and keep it in order, and to observe and report to appellant any defect or settling that might occur in the pavement along the line of the tunnel. The two men upon whom service was made were employed to make these observations. There is some conflict in the evidence as to who employed these men, after October 15, 1907. It is conceded that prior to this the appellant company had removed its local office and all its belongings from the District of Columbia. Appellee contends that these two men were left by the defendant to make the observations; while the defendant insists that it employed the Tunnel Concrete Company to make the observations, and that the two men were employed by said company to perform this work after October 15, 1907.



The witness Mills testified that he and Ball were in the employ of the Tunnel Concrete Company after October 15, 1907; that the money to pay his wages and that of Ball was sent to him by one Williams, who was chief engineer of appellant company and president of the Tunnel Concrete Company, and that he paid Ball his wages. Ball was taken to the office of counsel for appellee, where he made statements to the effect that he had been employed by defendant for more than four years and continued in its employ up to January 11, 1908. These statements he afterwards contradicted under oath. Ball was a common laborer working under the direction of Mills. His wages were sent to Mills, and paid to him by Mills. There is a strong probability that he was mistaken as to who his employer was after October 15th, since he continued to hold the same relation to Mills after, as he did before, the change. His employment, character of work, and amount of wages received remained the same after the change as before. Mills testified positively to the employment of himself and Ball after October 15th by the Tunnel Concrete Company, and in this he is corroborated by other witnesses holding official positions in the respective companies. We think the uncertain and contradictory evidence of Ball alone is not sufficient to overcome the testimony of these witnesses. The Tunnel Concrete Company and the appellant are independent corporations. Some of the directors of one company are directors in the other, and the principal stockholders of the Tunnel Concrete Company are stockholders in the appellant company.

Section 1537 of the Code of the District of Columbia provides as follows, in relation to service of summons on foreign corporations: "In actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its business, or, in case he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, if there be no such place of business by leaving the same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court." On February 1, 1907, this provision of the Code was amended by adding the following (34 Stats. L., 874): "When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or claims growing out of any tort heretofore or hereafter committed in the said District."

It will be observed that these provisions of the statute furnish a means of securing service on foreign corporations under two conditions: First, where such a corporation has a place of business in the District, and, second, where such corporation is transacting business in the District but has no place of business therein. Counsel for appellant urge that the appellant company, at the time service was attempted to be made, was not doing business in the District. It is unnecessary for us to determine this question. Appellant had closed its office and removed its property from the District. Hence, if it was doing business here within the provision of the statute it must have been through an officer,

agent, or employee. We have found that Mills and Ball, at the time the service was made, were not officers, agents, or employees of the appellant, and service upon appellant could not be secured by service of summons upon them. The only agent the appellant seems to have had in the District, at the time service was attempted to be made, was the Tunnel Concrete Company. It is insisted that this company was formed by the appellant to be used as a subterfuge in cases like the present to enable appellant to escape service. This conclusion was based upon certain evidence to the effect that the stockholders, directors, and officers in the Tunnel Concrete Company, in some instances, held the same relation to the appellant company. The fact remains that the Tunnel Concrete Company was a separate, independent corporation from that of appellant. It had the power to contract with appellant to perform the work it engaged to do in the District. There is nothing to prevent the stockholders of appellant company from being stockholders in the Tunnel Concrete Company, or the directors and officers in one being the directors and officers in the other. Neither company owned stock in the other. Neither would the fact, if established, that the appellant furnished the money for the Tunnel Concrete Company to do business on affect the situation. As was well said by Mr. Justice Jackson in *United States v. American Bell Telephone Co.*, 29 Fed. Rep., 17: "For one person to supply means for another to do business on is not the doing of that business by the former." No attempt was made to procure service upon appellant through service of summons on the Tunnel Concrete Company as the agent and employee of appellant. If such service had been made, we would be confronted with the more difficult question of whether or not appellant was doing business in the District within the meaning of the statute, a question upon which we express no opinion.

Statutes providing a method for service of process for the purpose of bringing individuals or corporations into court, must be strictly followed, and the court is powerless to declare a service of process valid where there has not been a strict compliance with the requirements of the statute. In this case the statute prescribes the manner in which summons should be served in order to bring appellant into court. No other method will avail. No substitution can be made by the court that will give it jurisdiction. The situation may be an unfortunate one; the circumstances may look suspicious, but it is one which the court, in the face of the letter of the statute, can not remedy.

The judgment is reversed with costs, and the cause remanded for further proceedings in accordance with the views herein expressed.

Reversed.

**Chattel Mortgage.**—A chattel mortgage upon a stock of merchandise, which contains a stipulation authorizing the mortgagor to sell the same in the ordinary course of business at retail, without requiring the net proceeds of such sales to be applied upon the mortgage indebtedness, is held, in *Madson v. Rutten* (N. D.), 113 N. W., 872, 13 L. R. A. (N. S.), 554, to be conclusively deemed to be fraudulent and void as to the creditors of the mortgagor.

# Court of Appeals of the District of Columbia.

J. PAUL SMITH, APPELLANT,

v.

SAMUEL ROSS, TRADING AS BARBER  
& ROSS.

PRACTICE; STET CALENDAR; STATUTE OF LIMITATIONS;  
RUNNING ACCOUNT.

1. In order for a review by this court of a ruling of the trial court removing a case from the stet calendar and placing it upon the trial calendar, objection must have been made to such ruling and an exception noted.
2. Where plaintiff contracted to furnish materials for the erection of twenty houses, the materials being delivered from time to time and the price thereof entering into a running account upon which payments were made from time to time, the whole account is to be considered as one account, and the bar of the Statute of Limitations does not begin to run until the date of the last item appearing therein.
3. The reading to the jury from the stenographer's notes of certain parts of the testimony, after the jury had been considering the case for some time and upon their request, can not be assigned as error where counsel for appellant was present and made no objection to the reading of the testimony.

No. 1813. Decided May 5, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 44,072, entered upon a verdict for plaintiff in an action of assumpsit. Affirmed.

Mr. JOHN RIDOUT for the appellant.

Mr. J. J. DARLINGTON and Mr. C. L. FRAILEY for the appellee.

Mr. Justice VAN ORSDDEL delivered the opinion of the Court:

This case comes here on appeal from a judgment rendered in the Supreme Court of the District of Columbia against appellant, defendant below, on the verdict of a jury in favor of appellee for \$5,586.07. The declaration is upon common counts, to which appellant pleaded that he had never promised as alleged, was not indebted, and that the claim of appellee was barred by the Statute of Limitations.

It appears that, in the latter part of 1896, or early in 1897, appellee agreed to furnish to appellant and two associates, Kimmel and Simpson, certain building material to be used in the construction of twenty houses in the city of Washington. Fourteen of the houses were erected in one locality, and six in another. Of the material furnished for the fourteen houses, part of it was charged on the books of appellee to Kimmel and part of it to Simpson. All of the material furnished for the six houses was charged to Simpson. The evidence tends to show, that under the arrangement entered into in regard to the construction of the fourteen houses, appellant and Kimmel were each to have a one-quarter interest, and Simpson a one-half interest, in the profits of the houses. With regard to the six houses, each was to have a one-third interest in the profits derived therefrom. As before stated, appellee furnished the material for the fourteen houses to Kimmel and Simpson, but there is evidence to show that, when these houses were near completion, appellant told appellee that he had an interest in them. When it came to furnishing materials for the six houses, appellee declined to furnish the same until he had consulted with the three men and ascertained the true ownership of

the property. The evidence discloses that the three came to appellee's office and explained that they desired to pay an obligation for materials furnished for the fourteen houses out of money which they had obtained from a building loan for the erection of the six houses. The three admitted their joint ownership in the six houses and also in the fourteen houses. Appellee then agreed that the obligation on the fourteen houses might be paid from the building loan on the six houses. There was no controversy as to the amount due appellee for the material thus furnished.

It appears from the record that this case was, by order of the court below, placed on the stet calendar January 6, 1902. On January 5, 1903, appellee filed a motion requesting that a day be set for the trial of said cause. Thereupon, the case was taken from the stet calendar and placed upon the regular assignment for trial. Various continuances of the case were had over objection of appellant's counsel until, on March 14, 1907, a motion was made by appellant's counsel for the dismissal of the suit, which motion was overruled by the court. The case was tried to a jury, and, upon verdict rendered in favor of appellee, judgment was entered. Appellant presents the following assignments of error:

"The court below erred as follows:

"1. In overruling defendant's objection to swearing the jury, and in proceeding with the trial of the case.

"2. In refusing to grant defendant's first prayer.

"3. In refusing to grant defendant's second prayer.

"4. In refusing to grant defendant's third prayer.

"5. In refusing to grant defendant's fourth prayer.

"6. In refusing to grant defendant's fifth prayer.

"7. In refusing to grant defendant's sixth prayer.

"8. In refusing to grant defendant's seventh prayer.

"9. In reading to the jury when they returned into court after retiring to consider their verdict, portions of the testimony of Kline and Smith and certain deeds, as set forth in the record at pages 22 to 26.

"10. In reading to jury more than was requested.

"11. In refusing to instruct the jury as asked by defendant in respect of the failure of plaintiff to call Simpson as a witness.

"12. In refusing to instruct the jury as to the effect of the verdict and judgment."

The first assignment of error is not properly before us for consideration. The proceeding being upon a mere rule of court, appellant will be deemed to have waived the advantage of the rule, unless objection was made to the ruling of the court and an exception noted. It appears that no objection was interposed to the removal of the case from the stet calendar. Numerous continuances were had over the objections of appellant, but no ground of objection was stated or exception taken. In the absence of such objection and exception, no question is here presented for review. It is insisted, however, that appellant's motion of April 22, 1907, to reverse the interlocutory order of the court, rendered January 5, 1903, removing the cause from the stet to the trial calendar, was sufficient to raise, for review, any question touching such removal that might have been raised at the time the order was made. It is unnecessary to consider this point for the reason that

appellant's motion was not filed as required by the rule of court, which is as follows: "Every motion shall be made in writing, and shall, together with the papers upon which it is founded, if made upon matters not already of record, be filed in the clerk's office; and a copy of the motion, and of the affidavits or papers upon which the same is founded, must be served upon the opposite party, or his attorney, at least two clear days, Sundays included, except when otherwise provided by law, before the day fixed for the hearing." This motion was in writing, but it was not filed in the clerk's office, or notice given, as required by the rule. In fact, the motion was not presented until the jury was sworn and the court was ready to proceed with the trial. This was too late. Appellant will be held to have waived any objection that he may have had to the action of the court on January 5, 1903, in transferring the case from the stet to the trial calendar.

The second, fifth, sixth, seventh, and eighth assignments of error relate to the refusal of the court to grant certain instructions requested by counsel for appellant to the effect that the evidence was not sufficient to support a recovery against the appellant for the amounts claimed in appellee's declaration, either in whole or in part. We are of the opinion that the evidence tending to establish appellant's liability was sufficient to present a case for the consideration of the jury. It was submitted with an impartial and careful charge by the court. On this branch of the case we find no error.

The third assignment of error is based upon the refusal of the following instruction: "Unless the jury find from a preponderance of all the evidence that the defendants Kimmel, Simpson, and Smith were jointly interested in all the houses for which they find from the evidence (if they do so find) material was furnished by the plaintiff then their verdict should be in favor of the defendant Smith." Appellee's declaration set forth two causes of action—one for material furnished in the construction of the fourteen houses, and the other in the construction of the six houses. This instruction, if given, would have operated to take from the jury the right to find a partnership existing as to one set of houses and not as to the other, or vice versa. The general charge of the court to the jury required the jury to determine from the evidence, whether or not the appellant was jointly interested as owner or proprietor in the building of the houses. This, we think, was sufficient to properly present the evidence to the jury for its consideration. It was proper for the jury to determine from the evidence in this case, not only the liability of the appellant for material furnished for all of the houses, but for the particular ones set forth in the separate counts of the declaration.

The fourth assignment of error complains of the refusal of the court to grant the following instruction: "If the jury find from all the evidence that any of the material furnished by plaintiff was so furnished prior to July 28, 1897, then they are instructed that as to such material the plaintiff's cause of action is barred by the Statute of Limitations even though they should find that payment generally on said account of such material was made by the other defendants after July 28, 1897, unless they shall further find that such payment was made with the knowledge and by the direction of the defendant Smith." It

appears from the record that material amounting in value to \$5,592.16 had been furnished by appellee, under the arrangement we are here considering, more than three years before this action was commenced. It is, therefore, insisted that the claim here sought to be recovered is barred by the Statute of Limitations. It was not error to refuse this instruction, for the reason that the evidence tended clearly to show that appellee's contract was a continuing one to furnish materials for the twenty houses. Materials were delivered from time to time under their general contract, and the price thereof entered into a running account, upon which payments were made from time to time. We think the whole account must be considered as one account, with the element of mutuality running throughout the whole transaction. In such a case, the bar of the statute does not begin to run until the date of the last item appearing in the account.

Assignments of error nine to twelve, inclusive, arise from the court having read to the jury certain portions of the evidence from the stenographer's notes. It appears that, after the jury had been considering the case for a number of hours, they returned to the court room and propounded certain questions to the court, among others, requesting that certain evidence should be read to them. This request was granted. It is unnecessary for us to consider these assignments, as counsel for defendant was present and made no objection to the reading of the testimony, or any part of it. The only objection made by counsel was that the court had substituted his version or recollection of the testimony for the recollection of the jury. This objection can not avail appellant for the reason that it clearly appears that there was no variance between the evidence of the witnesses which was read to the jury by the court and the evidence of the same witnesses as it appears in the record. Neither is there anything to show that the deeds read in evidence before the jury retired were not the identical deeds read to them at their request. So far as the objection that the court read to the jury more evidence than was requested, it appears that the evidence so read consisted of but three questions and answers, which were in appellant's favor, and he could not in any way have been prejudiced by the mistake of the court. Appellee was not required to call the alleged partner, Simpson, as a witness. There was no error in the court's refusal to instruct the jury as to the effect of the verdict and judgment, as requested by counsel for appellant.

A careful review of the entire record in this case fails to disclose any reversible error. The judgment of the Supreme Court of the District is affirmed with costs, and it is so ordered.  
Affirmed.

**Suretyship.**—The omission of a holder of a note given by the cashier of a bank, and which was surrendered and marked "Paid," when an entry of its amount was made by the cashier on the pass book of the holder, to give the surety notice of the facts concerning the surrender of the note, or of the suit brought against the holder by the receiver of the bank to recover the amount credited in the pass book, and which was pending over three years, is held, in *Hier v. Harpster* (Kan.), 90 Pac., 817, 13 L. R. A. (N. S.), 204, not to absolve the surety from liability on the note.

**Court of Appeals of the District of Columbia.****J. STEWART HARRISON ET AL., APPELLANTS,****v.****JOHN C. BLACK ET AL.****CIVIL SERVICE EXAMINATIONS FOR POSITIONS UNDER DISTRICT OF COLUMBIA.**

A decree dismissing a bill to enjoin the Civil Service Commission from holding examinations for positions under the District of Columbia affirmed on the ground that the interests of complainants are not shown to have been affected thereby.

No. 1850. Decided May 19, 1908.

**APPEAL** by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 27,353, dismissing a bill for an injunction. Affirmed.

Mr. R. P. EVANS for the appellants.

Mr. D. W. BAKER and Mr. STUART McNAMARA for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

In this suit appellants seek a reversal of the decree entered in the Supreme Court of the District dismissing their bill, in which they allege themselves to be citizens of the United States and residents and taxpayers of the District and contributors of their proportionate part of the expenses of the General Government, and in which they pray that the Civil Service Commission of the United States be restrained from holding examinations for positions under the District of Columbia; the ground for asking such relief being that said examinations are beyond the scope of the authority of the commission, and that, therefore, the public moneys contributed and paid by complainants are being unlawfully used and expended and an illegal burden of taxation thus imposed upon complainants.

The bill avers that said examinations are conducted at the request of the Commissioners of the District and constitute a scheme on the part of said Commissioners to favor a certain class to the exclusion of another class to which complainants belong. It is further represented in the bill that said Commissioners "reserve to themselves the right to disregard the result of said examinations." Attached to the bill as an exhibit thereto and as a part thereof is a letter from the Civil Service Commission to counsel for complainants antedating the date of the bill, in which it is stated that "so far as the commission is aware, there is no requirement of law or Executive order that it should hold examinations for the Commissioners of the District of Columbia, but it has been its practice to do so as a matter of courtesy, when the holding of such examinations did not interfere with the regular business of the commission."

In the return filed by the Civil Service Commission it is admitted that the positions under the District of Columbia are not within the classified service. It is further stated that in 1895 the President of the United States directed the Civil Service Commission to provide examinations for persons seeking places under the District of Columbia, but instructed the commission that in so doing no extra expense should be incurred; that between 1896 and the present "these examinations have

been held and in so doing the Civil Service Commission has entailed no extra expense nor prevented itself from discharging its ordained functions for the General Government;" that "the examinations have been held without any increase in the force of the Civil Service Commission."

With this return was filed a demurrer to the bill and by consent of counsel the hearing upon the bill, the rule to show cause, the return, and the demurrer was had at the same time.

The bill is so easily disposed of on the merits that we do not stop to consider the various preliminary objections which the appellees have raised against it. Complainants rest their claim to relief upon the proposition that the holding of competitive examinations in the District of Columbia by the Civil Service Commission illegally burdens the complainants with taxation. The return sets forth clearly and explicitly that no extra expense whatever has been entailed by holding these examinations, and that the ordinary work of the commission has not been interfered with.

This being an equitable proceeding the interests of all the parties will be considered and the right of the complainants to the relief sought must clearly appear before the court will interfere with the District authorities to deprive them of the assistance and cooperation of the Civil Service Commission in securing proper persons for appointment in the District service. It is not stated in the bill that either of the complainants has been, or is, an applicant for any of the positions for which examinations have been, or are to be, held. It is not contended that the Commissioners of the District have attempted to delegate their authority over appointments, and no relief is prayed against them. It is obvious that the complainants present no grounds for relief. Unquestionably the Commissioners of the District have ample authority to conduct competitive examinations for the purpose of securing persons for appointment. That they have secured the assistance of the Civil Service Commission is no concern of the complainants unless it can be made to appear that they are substantially affected thereby. It appearing that the complainants are not so affected it follows that the decree dismissing their bill of complaint was correct. It is, therefore, affirmed, with costs.

Affirmed.

Sound principles of public policy are held, in *State ex rel. Young v. Harris*, 102 Minn., 340, 113 N. W., 887, 13 L. R. A. (N. S.), 533, to require that the State shall be precluded from attacking the franchise of a village which had been permitted to exercise the functions of a village de facto for the period of twenty years, and had been recognized as an existing village by legislative enactment.

The right of a municipality to recover back money paid in violation of a constitutional prohibition to secure a railroad and depot is sustained, even after the railroad company has complied with the conditions, in *Luxora v. Jonesboro, L. C. & E. R. Co.*, 83 Ark., 275, 103 S. W., 605, 13 L. R. A. (N. S.), 157. The few cases that can be found on the subject sustain the doctrine of the case, as shown by the note in L. R. A. (N. S.).

The liability of a railroad company to employees for injuries caused by a defectively loaded car, upon which question there seems to be a great diversity of opinion, is sustained in *Wallace v. Seaboard Air Line R. Co.*, 141 N. C., 646, 54 S. E., 399, 13 L. R. A. (N. S.), 384, where it is shown that it was customary for the employees to use crosspieces nailed to the standards of loaded lumber cars to assist them in climbing over the cars in the performance of their duties.

Ordinary care in the selection of its servants is held, in *Fairbanks v. Boston Storage Warehouse Co.*, 189 Mass., 419, 75 N. E., 737, 13 L. R. A. (N. S.), 422, to be the measure of duty which a storage company owes to a patron to protect him from assaults by them while he is on the company's premises on business connected with the storage contract.

The disputed question as to the applicability of the maxim, *Res ipsa loquitur*, in favor of an injured servant, is answered in *Klebe v. Parker Distilling Co.*, 207 Mo., 480, 105 S. W., 1057, 13 L. R. A. (N. S.), 140, by holding that it may apply in a proper case, but only as a last resort to prevent miscarriage of justice, when direct and positive proof by living witnesses can not be had. It was denied on the facts of the case where the accident resulted from the breaking of an elevator rope or cable.

Emergency treatment furnished an injured employee of a company at the request of a foreman is held, in *Salter v. Nebraska Teleph. Co.* (Neb.), 112 N. W., 600, 13 L. R. A. (N. S.), 545, to extend generally for a time sufficient for the party employed to communicate with the company, and, if it declines to be further responsible, for notice to the proper proper authorities, if the injured person is entitled to public care.

Mere knowledge and consent on the part of a railroad company to the fact that the brother of one who has been employed to keep water in a tank for the use of locomotives has for a long time assisted in the work is held, in *Grisom v. Atlanta & B. Air Line R. Co.* (Ala.), 44 So., 661, 13 L. R. A. (N. S.), 561, not to charge the railroad company with the duty to him to maintain the machinery in a safe condition, so as to give him a right of action in case of injury by defects in it.

But a cook assisting the manager of outfit cars of a railroad company in which workmen are lodged and boarded, who lives upon the cars, but is furnished by the manager, and not employed by the company, is held, in *Pugmire v. Oregon Short Line R. Co.* (Utah), 92 Pac., 762, 13 L. R. A. (N. S.), 565, to bear such a relation to the company as to require it to exercise ordinary care to prevent injuring her.

One employed by a servant to assist in the performance of his master's business is held, in *Thysen v. Davenport Ice & Cold Storage Co.*, 134 Iowa, 749, 112 N. W., 177, 13 L. R. A. (N. S.), 572, not to be an employee of the latter, for whose negligence the master will be liable, unless the servant had authority, express or implied, to employ help.

**Bankrupt—Corporation—Livery and Boarding Stable.**—It has been held, in *Gallagher v. DeLancey Stables Co.*, 19 Am. B. R., 801, that a corporation, formed for the purpose of conducting a general livery and boarding stable business, is not subject to adjudication as a bankrupt, even though it occasionally traded in horses and vehicles.

**Composition—Adjudication Must Precede.**—In *re Back Bay Automobile Co.*, 19 Am. B. R., 835, holds that a composition by an alleged bankrupt can only be effected after he has submitted to an examination under section 7 (9) of the Bankruptcy Act, at the first meeting of his creditors, which under section 55a thereof can not be held until after the adjudication.

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A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Newton & Gillette, Solicitors

In the Supreme Court of the District of Columbia.  
Sarah Faraley et al. v. William T. Collins et al.

No. 27,907. Equity Doc. 61.

The object of this suit is to obtain a decree for partition by sale of part lot thirteen in square four hundred and five in the city of Washington, in the District of Columbia, as described in the bill in this cause. On motion of the complainants, it is, this 16th day of July, 1908, ordered that the defendant, William T. Collins, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk.

29-31

H. S. Matthews, Solicitor

In the Supreme Court of the District of Columbia.  
James B. Nourse et al., Complainants, v. Rosa Chew Williams et al., Defendants.

In Equity, No. 27,885. Docket No.—

The object of this suit is to obtain the sale for the purpose of partition, of all that certain tract of land situate in the District of Columbia and known as the "Highlands," said tract being located on the west side of Wisconsin avenue and containing 22 and 487-1000 acres; also, lot 91 in William J. Partello's subdivision of lots in square 289 in the city of Washington, District of Columbia. On motion of the plaintiffs, it is, this 15th day of July, A. D. 1908, ordered that the infant defendants, Mary P. Nourse, Charlotte St. G. Nourse, Walter P. Nourse, Charles J. Nourse, Jr., and Juliette L. Nourse, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk.

29-31

**Legal Notices.**

**Rudolph H. Yeatman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice,** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Joseph Y. Potts**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **16th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. **LEVIN J. WOOLLEN**, 810 V st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,838. Administration. [Seal.] 29-St

**Hill, Roger & Mattingly, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice,** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Neill Louise Allen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. **M. JENNIE McELFRESH**, 1004 H st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,855. Administration. [Seal.] 29-St

**Duane E. Fox and Geo. Francis Williams, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William L. Ralph**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. **LOUISE M. RALPH**, Care Fox & Williams, Washington Loan and Trust Company, Washington, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,209. Administration. [Seal.] 29-St

**M. J. Colbert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary E. Killigan**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. **THOMAS J. KILLIGAN**, No. 1718 7th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,868. Administration. [Seal.] 29-St

**John B. Larner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Perris A. Cleaveland**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **10th day of June, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, by **Frederick Elcheberger**, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,178. Administration. [Seal.] 29-St

**Legal Notices.**

**Archer & Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Maurice J. Soule**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **13th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of July, 1908. **CLARA E. SOULE**, 1308 Corcoran st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,848. Administration. [Seal.] 29-St

**Wm. L. Pollard, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Alice Brown**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **18th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. **ANNIE T. BROWN**, 413 You st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,885. Administration. [Seal.] 29-St

**G. Percy McGlue, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Denis McKeown**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1908. **PATRICK McKEOWN**, 1404 8 st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,218. Administration. [Seal.] 29-St

**Win. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **J. Henley Smith**, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a probate court, appointed Monday, the **10th day of August, 1908**, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hands this 15th day of July, 1908. **MARY R. HENLEY SMITH; CLAUDIAN B. NORTHROP; and AMERICAN SECURITY AND TRUST COMPANY**, by **Wm. A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,529. Administration. [Seal.] 29-St

**Carlisle & Luckett, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Thomas Barry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of July, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of July, 1908. **MARGARET BARRY**, 1013 C st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,403. Administration. [Seal.] 29-St



## Legal Notices.

[Filed July 13, 1908.]

A. Leftwich Sinclair, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court of the United  
States for the District of Columbia.

In the Matter of the Payment of Damages Resulting  
to Adjacent Property from Changes in the Grade of  
Streets, Avenues, and Alleys, Authorized by  
the Act of Congress, Approved February 12, 1901,  
Relative to the Elimination of Grade Crossings  
on the Line of the Baltimore and Potomac Rail-  
road Company in the District of Columbia.

District Court No. 871.

Notice is hereby given that we, the undersigned, have been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress, approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Tuesday the Twenty-second day of September, A. D. 1908, at the United States courthouse (City Hall), in said District, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the real property affected by the changes made in the grades of the following named streets, avenues, and alleys in said District and hearing testimony touching the damages resulting to said property from said changes of grade, pursuant to the terms and provisions of an act of Congress approved June 20, 1906, entitled, "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: South Capitol street from D street to Canal street; Sixth street southwest, between D street and School street; C street southwest, between Sixth street and Seventh street; Virginia avenue southwest, between Sixth street and Seventh street; D street southwest, between Sixth street and Sixth and One-half (6½) street; Seventh street southwest, between D street and Maryland avenue; C street southwest, between Seventh street and Eighth street; the alleys in square numbered four hundred and sixty-four (464); Tenth street southwest, between Maryland avenue and C street; Maryland avenue southwest, between Ninth street and Eleventh street, and Fourteenth street southwest, between D street and Water street. All owners of real property damaged by the changes made in the grades of any of said streets, avenues, or alleys will file a petition with us, in this cause, duly signed and sworn to, for an allowance of damages within twelve months after the said twenty-second day of September, A. D. 1908. It is provided in and by the aforesaid act of Congress, approved June 20, 1906, that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine. CHARLES

[Seal] A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission Appointed to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 29-8t

Sheehy &amp; Sheehy, Solicitors

In the Supreme Court of the District of Columbia,  
Holding a Special Term as an Equity Court.  
In the Matter of the Dissolution of The American  
Home Life Insurance Company, a Corporation.  
In Equity No. 27,928.

Upon consideration of the petition filed in the above entitled matter by James H. Vermilya, Charles T. Yoder and James H. Caton praying for a dissolution of The American Home Life Insurance Company, a corporation chartered under the laws of the District of Columbia, it is, by the court, this 14th day of July, A. D. 1908, ordered that all persons interested in said corporation appear in the Supreme Court of the District of Columbia, by the 25th day of August, A. D. 1908, and show cause, if any they have, why said corporation should not be dissolved as prayed. Provided that a notice of this order be published in The Evening Star, a newspaper of general circulation, weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid, and that said notice, also, be published in The Washington Law Reporter.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk, by F. W. Smith, Asst. Clerk. 29-8t

Justice blanks of every description for sale at this office.

## Legal Notices.

In the Supreme Court of the District of Columbia.

George J. Greenfield, Executor of the Last Will and  
Testament of Charlotte E. Williams, Deceased,  
Complainant, v. Mary G. Mow et al., Defendants.  
Equity No. 25,988.

William M. Lewin, trustee in the above-entitled cause, having reported to the court that he has sold the real estate in said cause involved, to wit, the east 22.1 feet of part of lot numbered three (3) in square numbered three hundred and seventeen (317), with improvements thereon, the said property being premises numbered 1115 I street northwest, in the city of Washington, in the District of Columbia, for the sum of eighty-eight hundred and seventy dollars (\$8870.00), it is this 15th day of July, A. D. 1908, ordered that such sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of August next. Provided a copy of this order be inserted in The Washington Law Reporter once in each of three successive weeks before the said day last hereinafore mentioned. By the Court: WRIGHT, Associate Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-8t

Edward S. Bailey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Adella L. S. Thoms, Deceased.  
No. 15,310. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles H. Horton and Benjamin G. Pool, executors named in said last will and testament, it is ordered this 14th day of July, A. D. 1908, that Belle Shaw, Lizzie Barton Kingsley, John W. Wright, Alfred G. Wright, Adeline Scott, Ami Farnham, Mrs. G. W. Sylvester, Mrs. Miller, Elsie M. Bunnell, Lida L. Ripley, and all the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Thursday, the 20th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-8t

R. P. Shealey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James H. McGill, Deceased.  
No. 15,331. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert Preston Shealey and Samuel A. Drury, it is ordered this 13th day of July, A. D. 1908, that John L. McGill and Charles McGill, and all others concerned, appear in said court on Monday, the 17th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-8t

Allen C. Clark, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Helen W. Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. ANNIE WORRELL, care of Allen C. Clark, 605 F st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,407. Administration. [Seal.] 29-8t

**Legal Notices.**

**W. F. Mattingly and W. C. Clephane, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Maria G. Dewey, Complainant, v. William B. Todd**  
**et al., Defendants.**  
 No. 25,880. Equity Doc. —

The object of this suit is to obtain a decree authorizing the complainant to pay into court such sum of money, if any, as is properly payable by her, in excess of the aggregate of the balance of the personal estate of Marianne A. B. Kennedy, deceased, which has already come and may hereafter come into the hands of the executor of her estate, as may be determined by the court necessary to satisfy and pay the legacies bequeathed by the will of said decedent, after deducting from said funds all debts, funeral expenses, and costs of administration; and upon payment by said complainant as aforesaid, that said executor be directed to execute to her a deed in fee to certain real estate known as 715 Market Space, Washington, D. C.; and incidentally for such accounting and orders as may be necessary. On motion of the complainant it is, this 10th day of July, 1908, ordered that the defendant, May Bacon, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week

[Seal] for three successive weeks in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

**W. H. Sholes, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Elizabeth S. Danenhower et al., Complainants, v.**  
**Joseph L. Danenhower et al., Defendants.**  
 Equity No. 27,857.

The object of this suit is to sell original lot five (5) and the west 8 feet 8½ inches front by the full depth thereof of original lot four (4) in square two hundred and fifty (250), in the city of Washington, District of Columbia, and reinvest the proceeds as provided in section 100 of the Code of Laws for said District. On motion of complainants, it is this 14th day of July, A. D. 1908, ordered that the defendants, Joseph L. Danenhower, William J. Danenhower, Rebecca E. Gallagher, Frank G. Danenhower, Mary E. Bryant, Clarence E. Danenhower, John H. Danenhower, an infant; Joseph L. Danenhower, an infant; Elizabeth Rust, Francis L. Danenhower, Laura Green, Marshall Philpitt, an infant, and Ethel Philpitt, an infant, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order

[Seal] be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

**SECOND INSERTION.**

**H. Randall Webb, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Olivia Scala v. Heirs of George Beall, Unknown.**  
 No. 27,890. Equity Doc. —

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece and parcel of real estate, to wit: Lots numbered forty-five (45) and forty-six (46) and the eastern one (1) foot and (7) inches of lot numbered forty-four (44), or so much of said lot forty-four (44) as was embraced within the original boundaries of lot numbered fifteen (15) in a subdivision of lots numbered fourteen (14) and fifteen (15) in square numbered nine hundred and forty-nine (949) in Washington City, District of Columbia, as per plat recorded in libber 25 at page 182 in the office of the surveyor for the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months

[Seal] in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**Legal Notices.**

**Marion Duckett & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maria P. Dare, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 8th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 8th day of July, 1908. ELIZABETH B. SOTHORON, 221 A st. S. E.; ELLA BELT BERRY, 221 A st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,880. Admin. [Seal.] 28-St

**Chas. H. Bauman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Lavinia V. Staples, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 31st day of July, 1908, at 10 o'clock, A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1908. CHARLES SCHAFER, Executor, by Chas. H. Bauman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,528. Administration. [Seal.] 28-St

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of July, 1908. FREDERICK A. FENNING, 412 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,284. Administration. [Seal.] 28-St

**Chas. H. Cragin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Allen Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of July, 1908. CHARLES H. CRAGIN, 321 4½ st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,179. Administration. [Seal.] 28-St

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William C. Drury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of July, 1908. HOSEA B. MOULTON, Washington Loan and Trust Building; WM. E. AMBROSE, 468 L. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,808. Administration. [Seal.] 28-St

**Legal Notices.****John B. Lerner, Solicitor****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****J. Edward Chapman, Complainant, v. the Unknown  
Heirs, Alienees, and Devisees of Charles G. Pa-  
leske, James Olden, Richard Peters, J. Attamont  
Phillips, Littleton Kirkpatrick, James Bayard,  
and Thomas Astley, Deceased, Defendants.**  
Equity, No. 27,859.

The object of this suit is to establish the title of the complainant by adverse possession to original lot numbered twenty-five (25), in square numbered four hundred and ninety-nine (499), of the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of July, 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of Charles G. Paleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, all deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington [Seal] Law Reporter and The Evening Star before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-31

**Edward L. Gies, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Magdalena Eichner, Deceased.****No. 15,357. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Michael A. Mess, it is ordered this 8th day of July, A. D. 1908, that the unknown heirs at law and next of kin of said Magdalena Eichner, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Erskine Gordon, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Anna R. Green, Deceased.****No. 15,308. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William A. Gordon and J. Holdsworth Gordon, it is ordered this 8th day of July, A. D. 1908, that Esale G. Gandell and Rose Quisenberry, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Irwin B. Linton, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Sarah S. Condit Smith, Deceased.****No. 15,865. Administration Docket—**

Application having been made herein for probate of the last will and testament and two codicils of said deceased, and for letters testamentary on said estate by Irwin B. Linton, it is ordered, this 8th day of July, A. D. 1908, that Mary L. Whitney and Isabelle de Milt MacCreery, and all others concerned, appear in said court on Monday, the 10th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Legal Notices.****William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Amanda D. Allen, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,194. Administration. [Seal.] 28-31

**Raleigh Sherman, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of William A. Wroe, Deceased.****No. 15,118. Administration Docket—**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Raleigh Sherman, it is ordered, this 7th day of July, A. D. 1908, that Mrs. Adele Keane, Bertie Wroe, Ida Wroe, Daisy Wroe, Mary Kellar, Nellie Willett, Evelyn Willett, Marcel Radabaugh, Ida Rowly, and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**H. Randall Webb, Attorney****In the Supreme Court of the District of Columbia.  
Jerome Hurst v. Heirs of George Beall, Unknown.**  
No. 27,889, Equity Doc.—

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece of real estate, to wit: Lot numbered forty-seven (47) in subdivision of certain lots in square numbered nine hundred and forty-nine (949) in the city of Washington, District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The [Seal] Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**Chapin Brown, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. S. Denham, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. LEWIS C. DENHAM, Executor, by Chapin Brown, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,498. Administration. [Seal.] 28-31

**Legal Notices.**

**C. C. James, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Robert T. Pywell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1908. **MARTHA E. PYWELL**, 1001 Eleventh st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,108. Administration. [Seal.] 28-3t

**R. E. Mattingly, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court**  
**Lorena B. White, Complainant, v. James A. White**  
**and Mary Gavin Flynn, Defendants.**  
 Equity No. 27,855.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 7th day of July, A. D. 1908, ordered that the defendants, **James A. White** and **Mary Gavin Flynn**, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published once a week for three successive weeks in *The Washington Herald* and *The Washington Law Reporter*. **WRIGHT, Justice.** A true copy. Test: **J. R. Young**, Clerk, by **F. W. Smith**, Asst. Clerk. 28-3t

**THIRD INSERTION.**

**Coldren & Fenning, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Burr Vickers, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **FREDERICK A. FENNING**, Century Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,356. Administration. [Seal.] 27-3t

**Blair & Thom, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alice Peyton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **JOHN B. PEYTON**, 111 C st. S. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,352. Administration. [Seal.] 27-3t

**Harry G. Kimball, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George D. Seely, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **ALICE H. SEELY**, care of Harry G. Kimball, 416 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,318. Administration. [Seal.] 27-3t

**Legal Notices.**

**Lawrence Huffy, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of New York, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cara H. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 30th day of June, 1908. **THEODORE D. WILSON**, 52 Broadway, N. Y. City; **MALCOLM HUFFY**, 416 6th st. N. W., Wash., D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,708. Administration. [Seal.] 27-3t

**William A. McKenney, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas C. Sullivan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **James F. Hood**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-3t

**A. A. Hoehling, Jr., Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles S. Wilson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 17th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of June, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by **William D. Hoover**, Second Vice-President; **A. A. HOEHLING, JR.**, 1416 F st. N. W. Attest: **WM. C. TAYLOR**, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,342. Administration. [Seal.] 27-3t

**Douglas & Douglas, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Povey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of March, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **W. H. RONSAVILLE**, 1840 New York ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,150. Administration. [Seal.] 27-3t

**Wm. L. Pollard, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Randolph Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of June, 1908. **ELIZA SAUNDERS**, 515 3d st. S.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 27-3t

**Legal Notices.**

**Brandenberg & Brandenberg, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Edward F. Droop, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 5th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 25th day of June, 1908. ANNA A. DROOP, 1455 Harvard st.; EDWARD H. DROOP, 925 Pa. ave.; CARL A. DROOP, 925 Pa. ave. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,804. Administration. [Seal.] 27-St

**Edwin C. Dutton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William Wheeler, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. EDWIN C. DUTTON, Columbian Bldg. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,845. Administration. [Seal.] 27-St

**Geo. Francis Williams, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of H. Maria Patton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of June, 1908. ROBERT W. PATTON, Box 210, Lewistown, Pa. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,862. Administration. [Seal.] 27-St

**William A. Donch, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Addie R. Perkins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of June, 1908. ELENA SMITH CHAPMAN, 610 H st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,225. Administration. [Seal.] 27-St

**W. Mosby Williams, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Samuel C. Redman et al. v. Aaron H. Potts et al.**  
**Equity, No. 27,099.**

John C. Weedon and W. Mosby Williams, trustees, having reported sale at public auction of part of the real estate decreed to be sold in this cause, to wit, 34 lots in the subdivision known as "Garfield Heights" and in said decree particularly described, situate in the District of Columbia, to M. Rebecca Reid, for the sum of six hundred and forty dollars (\$640), it is, this 26th day of June, 1908, ordered that said sale will be ratified and confirmed on the 27th day of July, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter prior to the last mentioned day. By [Seal] the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 27-St

**Legal Notices.**

**Crandal Mackey, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Catharine T. Allen, Complainant. v. Luke Welch,**  
**Michael Welch, Clara C. McCauley, Francis J.**  
**Welch, Lillian E. Welch, Bessie Welch, and Mary**  
**Welch. In Equity, No. 26,818.**

Crandal Mackey, trustee in the above entitled cause, having reported that he has sold all the real estate involved therein, namely, the north seventeen feet front by depth thereof of lot No. 11, in square No. 16, in the city of Washington, District of Columbia, known as premises No. 933 26th st. N. W., unto John G. Slater, agent, for the sum of four hundred and thirty-five dollars (\$435), it is, this 30th day of June, A. D. 1908, ordered that the said sale be confirmed unless cause to the contrary be shown on or before the 30th day of July, A. D. 1908. Provided this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter. By the [Seal] Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 27-St

**Henry C. Davis, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Maryland, respectively, have obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Margaret J. Badger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of June, 1908. CHARLES J. BADGER, Annapolis, Md.; ANNIE M. ELLIOTT, Marine Barracks, Wash., D. C. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,280. Administration. [Seal.] 27-St

**J. Wilmer Latimer, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Ohio, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Dixon Fullerton, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of July, 1908. ANGUS L. FULLERTON, Chillicothe, Ohio. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,217. Administration. [Seal.] 27-St

**FOURTH INSERTION.**

**W. L. Pollard and M. N. Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court for Said District.**  
**George A. Scott, Complainant, v. Henry Schroeder**  
**et al., Defendants.**  
**Equity No. 27,627.**

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18th street by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in liber 829, folio 60, et seq., of the land records of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof, for more than twenty-two years. On motion of the complainant, it is this 23d day of June, A. D. 1908, ordered that the defendant, Henry Schroeder, if living, or if dead, the unknown heirs, allenees, and devisees, if any, of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star. [Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 26-St

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JULY 24, 1908

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### Negotiable Instruments Law; Bill of Exchange; Acceptance; Consideration.

In *National Park Bank v. Saitta*, decided July, 1908, by the appellate division of the Supreme Court of New York and reported in the *New York Law Journal*, it was held that section 221 of the Negotiable Instruments Law (which is similar in its provisions to section 1437 of the Code of this District), providing that the holder of a bill presenting it for acceptance may require the acceptance to be written on the bill and if the request is refused may treat the bill as dishonored, applies not only to sight bills, but to bills payable a certain time after date, and as to the latter, although the date of payment is fixed, the holder, upon the drawee's refusal to accept in advance of maturity, may treat the bill as dishonored and proceed at once against the other parties. Although a bill payable at a fixed date need not be presented for acceptance in order to charge the drawer or endorsers, it is to the owner's interest that it should be accepted, and the step is one which a prudent man, ordinarily careful of his own interests, would take for his protection.

As between remote parties to a bill of exchange, as the payee or endorsee and the acceptor, the defense of no consideration involves both the consideration which the defendant received for his liability and that which the plaintiff gave for

his title, and unless there be an absence or failure of both these considerations the action will not fail. As to the defense of want of consideration, it is immaterial when an acceptance of a bill of exchange is made. The instrument is negotiable before acceptance and the acceptance is an acknowledgment of the debt and an absolute promise to pay it to the person who is or shall become the holder of the bill, and the rights of such holder are the same whether they were acquired in anticipation of acceptance or subsequent to it. An additional consideration, proceeding from one who is a bona fide holder to the drawee, is not essential to the right of such bona fide holder to recover upon the drawee's acceptance.

In the case before the court it appeared that a bill of exchange drawn by one Mauro on the defendant Saitta payable 60 days after date was purchased by the National Park Bank for full value, before maturity and before acceptance. It was subsequently accepted by Saitta before maturity. In an action by the bank against Saitta upon this acceptance, in which he claimed that he had received no consideration for his acceptance, held that, as the plaintiff was conceded to be a bona fide holder of the bill for value, this defense must fail.

### Damages for Procuring Breach of Contract.

In *Knickerbocker Ice Company v. Gardner Dairy Company*, decided by the Court of Appeals of Maryland, it is held that if wrongful or unlawful means are employed to induce the breach of a contract and injury follows, the party so causing the breach is liable in an action of tort. It is not lawful for one, in order to benefit himself, to wrongfully force a party to an existing contract to break it, and a threat to do an act which would seriously cripple or injure such party if he does not break the contract is equivalent to force. Procuring a breach of contract is an actionable wrong, unless there be justification for interfering with the legal right.

### Contingent Fees; Provision Against Compromise by Client.

In *Davy v. Fidelity and Casualty Insurance Co.*, decided June 9, 1908, the Supreme Court of Ohio holds that, while a contract for an attorney's fee contingent upon the amount to be recovered by judgment or settlement is ordinarily valid, yet when such contract contains a stipulation that the client shall not compromise or settle his claim without the consent of the attorney, it is champertous and voidable at the option of the client, and its illegality will avail as a defense in an action against a third party based on the contract. In such case the illegal stipulation can not be ignored and the other provisions of the contract enforced.



# Court of Appeals of the District of Columbia.

MARY A. DOBBINS, APPELLANT,

v.

ALICE E. THOMAS, EXECUTRIX OF FRANK  
H. THOMAS, DECEASED.

## EVIDENCE; CROSS-EXAMINATION; WRITINGS, EXPLANATION OF.

1. In an action to recover the value of personal property alleged to have been sold by plaintiff to defendant, a married woman, where the defense is that the transaction was with defendant's husband and that credit was given him, it is admissible for plaintiff to show, on cross-examination of defendant's husband, that he was without property while his wife was possessed of considerable means.
2. It is competent for the plaintiff in such case to explain why a letter dealing with the alleged indebtedness was addressed to the husband of defendant and not to defendant in person.

No. 1744. Decided March 8, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 47,377, entered upon a verdict for plaintiff in an action of assumpsit. Affirmed.

Mr. LEO SIMMONS for the appellant.

Mr. R. G. DONALDSON for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was brought by Frank H. Thomas, now deceased, against Mary A. Dobbins, a married woman, to recover the sum of \$296.83 on account of certain items of personal property sold by him to her. The plaintiff's claim was supported by affidavit, and in a former trial judgment was rendered thereon for the plaintiff, on the ground that the countervailing affidavit was insufficient in law to show a defense. That judgment was reversed on a former appeal. *Dobbins v. Thomas*, 26 App. D. C., 157: 33 Wash. Law Rep., 743. A contention of the appellant that she could not be held liable for the purchase of the articles because she was a married woman was then decided adversely.

The result of the new trial that followed was a judgment for the plaintiff for the whole amount of the claim, and from that this appeal has been prosecuted. Frank H. Thomas having died testate, during the pendency of the case in this court, his executrix has been made a party in his stead.

The record shows that the demand of plaintiff had the following origin: Plaintiff on July 28, 1903, was the owner of a house and lot in Cleveland Park, and defendant owned a house and lot in Thirteenth street. After some negotiations between them an exchange of the properties was agreed upon and carried into effect by the passage of deeds and delivery of possession. The plaintiff's evidence tended to show that after the agreement to exchange houses had been concluded, he agreed with defendant to exchange with her certain furnishings in the respective houses. It is undisputed that these articles were left in the houses and passed into the possession of the occupants with the same. Plaintiff has credited on his bill of particulars the value of the articles left in the house conveyed to defendant and received by him. There was no dispute in regard to the items of the account, but it was contended that it was excessive to the extent of \$17.50. The defense was that the

transaction was between plaintiff and her husband, R. D. Dobbins, and that she had no part in the agreement for exchange or sale, and had not promised to pay for the articles received therefrom. This question was submitted to the jury who found against the defendant.

Eleven errors have been assigned on exceptions taken. The first relates to the action of the court in permitting the plaintiff to testify to the values of the articles enumerated in his account, and the second to his action in permitting testimony of a declaration made by defendant to plaintiff's wife, on a casual meeting, to this effect: "Mrs. Thomas, I am ashamed to meet you, because I have not paid for those things." There was no error in admitting the evidence. The third assignment is embraced in a later one relating to the refusal of instructions to the jury. The fourth and fifth assignments relate to the admission of certain evidence. R. M. Dobbins, the husband of defendant, was a witness on her behalf. His testimony tended to show that the transaction was wholly with him, and that he, and not his wife, undertook to pay for the property. He was asked on cross-examination if his wife was a woman of considerable means at that time, as well as other questions tending to show that she had inherited a considerable estate from her father. It had been shown that the witness, himself, owned no property at the time of the transaction. Considering this fact and that the issue, concerning which there was a direct conflict in the evidence, was whether the sale had been made to the wife and upon her credit, the fact that she alone had any property when the sale was made, seems to be a pertinent circumstance for the consideration of the jury. The evidence was evidently offered for no other purpose.

There was no error in refusing to permit the witness, Johnson, for the defendant to show that he sent to R. M. Dobbins a statement of the amount and value of the coal left in the house by plaintiff. The statement corresponded with the item for coal stated in the plaintiff's bill of particulars. The object of the proffer was to show that he had mailed this account to R. M. Dobbins and not to his wife. There was no error in excluding the testimony, as there was nothing to show that plaintiff directed the statement to be sent to Mr. Dobbins and not to his wife. Moreover, a letter from the plaintiff to R. M. Dobbins enclosed a similar statement.

The seventh and eighth errors are to the effect that the court erred in permitting the plaintiff to explain a letter that had been written by him to R. M. Dobbins. This letter about July 28, 1903, began thus: "I enclose a copy of the statement of coal from A. Gary Johnson." Then follows a statement of the number and prices of certain chickens, and the coal and wood, as per Johnson's statement. Then followed: "As these are outside of our deal please send check." The plaintiff was called upon to explain this letter, the court ruled that it could not be interpreted by the witness, but that he could explain why he had written the letter. He was then permitted to state, over the objection of the defendant, that: "The money was to be paid me before they moved into the house. Mr. Dobbins came to me about the time they moved in and said, 'Mr. Thomas, Mrs. Dobbins has been disappointed in getting some money. She is going to make a \$5,000 loan. The thing is

pending and she has not got the money yet. She can not pay you the money for a few days.' I waited two or three days when I wrote that letter, as practically to write to his wife. I did not want to dun his wife. I expected she was good as gold and was as good as her word." There was no controversy between the parties at the time and it was not error to permit him to show the circumstances under which the letter had been written. It was for the jury to determine whether this letter showed that the claim was made against the husband alone, or was addressed to him as the representative of his wife.

The remaining assignments relate to the refusal of instructions asked by defendant. The first of these was to direct a verdict for the defendant. It had been settled on the former appeal that the alleged contract was one that could be made by, and enforced against the wife, and there was evidence tending to show that she had made it. The question was, therefore, properly for the jury to determine.

It is unnecessary to consume time with a statement of the several special instructions asked by the defendant. The charge contained a full and fair statement of the law of the case, including everything that could have been properly given on behalf of the defendant, and left the determination of the facts to the jury.

We find no error in the proceedings on the trial, and the judgment will be affirmed with costs.

Affirmed.

**Receiver in Bankruptcy—Accounts—Fees of Appraisers—Insurance Premium.**—In the case of *In re Kyte*, 19 Am. B. R., 768, it was held that a receiver will be allowed the appraisers' fees paid by him, although the trustee, being dissatisfied, has a new appraisal made, and that, where insurance on personal property is taken out by such receiver and continued for the benefit of the trustee, the premiums paid by the receiver are a proper subject of credit in his account.

**Sale—Fraud of Vendee—Rescission of Contract—Redelivery of Goods to Vendor.**—Where, within three months after placing an order for the delivery to him of certain lumber, the buyer mortgaged its real estate to its full value and within the succeeding eight months assigned practically all of its assets, and concealed such facts from the vendor until after the delivery of the lumber, which it did not pay for, it has been held, in *Haywood Co. v. Pittsburgh Industrial Iron Works*, 19 Am. B. R., 780, that the transaction is a fraud upon the vendor, and he is entitled to a redelivery of the lumber which was received by the vendee immediately preceding its bankruptcy and when it was advising creditors of its insolvency.

**Assets—Attorney Claimed Lien on Chattel Mortgages.**—In *Matter of Eurich's Fort Hamilton Brewery*, 19 Am. B. R., 798, it has been held that where an attorney, who had represented an alleged bankrupt in certain transactions, claims a lien for services upon certain chattel mortgages which came into his hands prior to the filing of the petition, the court may order that the mortgages and the assignments thereof be turned over to the receiver, subject to the lien of the attorney, who may have its amount determined either in the bankruptcy court or in any other court of competent jurisdiction.

## Court of Appeals of the District of Columbia.

LOUIS R. PFEIFFER, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

CRIMINAL PROCEDURE; WEIGHT OF EVIDENCE; ARREST OF JUDGMENT.

1. In a prosecution in the Police Court upon an information charging defendant with betting on a horse race in violation of section 869 of the Code, an exception to the refusal of a motion to direct a verdict for defendant is waived where the defendant subsequently produces evidence in his own behalf, and the motion is not thereafter renewed.
2. Nor, in such a case, will the appellate court inquire into the sufficiency of the evidence set out in the bill of exceptions to support a judgment of conviction, in the absence of a prayer for an instruction acquitting the defendant on that ground and an exception to the refusal of such prayer.
3. The question of the weight and sufficiency of the evidence can not be raised by a motion in arrest of judgment.

No. 1962. Decided March 31, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. W. E. AMBROSE and Mr. C. H. MERILLAT for the plaintiff in error.

Mr. STUART McNAMARA for the United States.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

Plaintiff in error was found guilty in the Police Court under the second count of an information charging him with making a bet on a horse race in violation of section 869 of the Code.

The trial was by jury on defendant's demand. The verdict was not guilty on the first count, and guilty on the second. The third was abandoned on the trial.

On the conclusion of the evidence for the Government, the defendant moved the court to exclude and strike out the same as insufficient to maintain the charge. This was denied, and an exception was noted.

Treating this motion as equivalent to one to direct a verdict for the defendant, the exception was waived and abandoned by the action of the defendant in introducing evidence on his own behalf. After the evidence was all in, he failed to renew his former motion or to ask an instruction to the jury to return a verdict on the ground of the insufficiency of the evidence. Counsel informed the court that he had no instructions to ask. At the conclusion of the court's charge, counsel stated: "Your Honor's charge is a very fair and full one and I have only to differ with your honor in two minor aspects of the case." These were stated, and exceptions noted; but it is unnecessary to repeat them, as no error has been assigned upon either. After the return of the verdict a motion was made in arrest of judgment on the following grounds: That the information is insufficient; that the statute is unconstitutional; that incompetent evidence had been admitted, and that the evidence failed to show that the defendant had made a bet. The record does not show that any action was had on this motion; but error has been assigned and the questions have been argued by both sides, as if it had been expressly denied and exception reserved. Upon this virtual admission that there was such action it will be considered.

The objection to the information, as contended on the argument, consists in the omission to enter the defendant's name in the second count in a blank space that had been provided in the printed form. The name does appear in another place in said count. There had been no demurrer to the information, or motion to quash the same on any ground, and the trial proceeded without attention being called to the defect. Had such an objection been made by demurrer or motion to quash, a new information might have been filed, or the defect cured, possibly, by amendment, as it was perfectly clear that the charge was against the defendant. He suffered no prejudice whatever on the trial from this omission in the count; and the objection came too late after verdict returned.

The objection to the statute as unconstitutional was abandoned on the argument. There was no exception taken to the admission of any evidence. Had there been, it would not furnish a proper ground of a motion in arrest of judgment; nor does such a motion go to the weight and sufficiency of the evidence.

Notwithstanding there was no motion or prayer for an instruction to the jury to return a verdict of acquittal because of the insufficiency of the evidence to warrant a conviction, it has been contended on the argument that the judgment should nevertheless be reversed, because the evidence recited in the bill of exceptions does not show the guilt of the defendant with the necessary certainty.

It is true that in cases of conviction of an infamous crime, an appellate court may sometimes inquire into the sufficiency of the evidence, and reverse the judgment on that ground, but it can not pass upon its weight or credibility. *Wiborg v. U. S.*, 162 U. S., 163 U. S., 632, 658; *Colgate v. U. S.*, 197 U. S., 207, 221.

We think, however, that such a discretion ought not to be exercised in a case of this character save, possibly, under extraordinary conditions. None such appear in this case. Where a party has acquiesced in the apparent sufficiency of the evidence in a case of misdemeanor, and taken his chances of a verdict, without raising any question thereon, it might happen that a bill of exceptions, though purporting to contain all the evidence, could be approved without close scrutiny. The proper scope of a bill of exceptions is to present such facts as are made necessary to show the foundation of exceptions reserved on the trial. As the question of the sufficiency of the evidence to sustain the verdict was not raised in this case, we must decline to consider it. The judgment will be affirmed.

Affirmed.

**Provable Claims in Bankruptcy—Damages for Death by Wrongful Act.**—In *Matter of New York Tunnel Co.*, 20 Am. B. R., 25, the United States Circuit Court of Appeals, Second Circuit, has held that a claim for damages for causing death by wrongful act is not provable against the estate in bankruptcy of the alleged wrongdoer; that though Congress, by the amendment to section 17 of the Bankruptcy Act, 1898, used language not wholly in harmony with other sections of the act, it is apparent that the intention was to preclude the possibility of claims for certain torts being discharged, whether reduced to judgment or not and nothing in the amendment indicates an intention to enlarge the classes of provable debts.

## Supreme Court of the District of Columbia.

### THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

v.

ALBERT M. KEEN.

#### POLICE REGULATIONS; KEEPING LIVE FOWLS.

1. A police regulation prohibiting the keeping of live fowls, etc., in any square having 75 per cent of its territory improved without a permit from the health officer of the District, nor without the consent of 75 per cent of the residents within a radius of 100 feet of the premises upon which the fowls, etc., are to be kept, held void for uncertainty.

No. 1807. Decided June 9, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. E. H. THOMAS and Mr. F. H. STEPHENS for the plaintiff in error.

Mr. C. C. TUCKER and Mr. J. M. KENYON for the defendant in error.

Mr. Chief Justice CLABAUGH, of the Supreme Court of the District of Columbia, who sat with the court on the hearing of this cause in the place of Mr. Justice Robb, delivered the opinion of the Court:

The defendant in error was tried before the Police Court of the District of Columbia, upon information charging the defendant with keeping poultry in square 2610, within the District of Columbia, said square having 75 per cent of its territory improved, without first having obtained a permit from the health officer, contrary to and in violation of the police regulations of the District of Columbia, and constituting a law of the District of Columbia.

The defendant interposed a motion to quash the information, which motion was sustained by the Police Court, from which action plaintiff in error has appealed to this court.

The regulation so declared to be unconstitutional by the Police Court is not set out in the record, but reads as follows:

"Sec. 6. No person shall keep any kind of live fowls or pigeons in any square or block, within the District of Columbia, which has seventy-five per cent of its territory improved, without having first obtained a permit so to do from the health officer of said District, which permit shall prescribe the conditions under which fowls and pigeons shall be kept; nor without having obtained the consent of seventy-five per cent of the residents within a radius of one hundred feet from the boundaries of the premises upon which fowls or pigeons are to be kept. Provided, however, that such fowls shall not be permitted to run or stray beyond the boundaries of the said premises; and provided further, that this regulation shall not apply to fowls or pigeons confined in coops in regularly established provision or commission stores or public markets, or to homing pigeons.

"Any person violating any of the provisions of this section shall be fined not less than two dollars and not more than ten dollars, and each day fowls or pigeons are kept or permitted to run at large as above provided, shall be deemed a separate offense hereunto."

This regulation was doubtless intended to apply

only to the regular keeping of domestic fowls and pigeons upon one's premises for general purposes, which might endanger the public health, and become a nuisance in other respects; but its language is so general that it might include such fowl when brought upon the premises and kept for a brief period before consumption as food; and it might possibly include birds of any kind. Moreover, if the regulation is based upon considerations affecting the public health, it would seem that there is some inconsistency in permitting the fowl to be kept by consent of neighbors within a certain limit.

It is unnecessary, however, to consider these and other objections in detail, inasmuch, as we think it is quite clear that the regulation in question is so indefinite in its terms that the judgment in this cause ought not to be reversed.

The regulation provides: "No persons shall keep any kind of live fowls or pigeons in any square or block which has seventy-five per cent of its territory improved . . . without having obtained the consent of seventy-five per cent of the residents within a radius of one hundred feet from the boundaries of the premises upon which fowls or pigeons are to be kept."

Such a provision is so indefinite that it is difficult to apprehend what was intended. Is the distance mentioned in the regulation to be determined by measurements entirely within the block in which the premises are situated where the fowls or pigeons are to be kept; or can residents in another block, if within one hundred feet of the premises where the fowls are to be kept, object to the keeping of the fowls?

The place from which the measurement is to be made is likewise indefinite, so that we find that there is such uncertainty in the terms of this regulation as compels us to sustain the judgment of the court below.

Other principles involved in this regulation have been so often decided by this court, that we have no doubt that a proper regulation can be drawn which will cover all the essential points in the one at issue.

Affirmed.

**Lease—Condition Against Sale of Lessee's Interest Without Written Consent of Landlord.**—The Supreme Court of United States has also very recently held, in *Gazlay v. Williams*, 20 Am. B. R., 18, that a condition in a lease, imposing forfeiture if the lessee's interest in the premises shall be sold under execution or other legal process without the written consent of the lessors, their heirs and assigns, is not broken by a sale of the interest of the trustee in bankruptcy of the lessee, under an order of the bankruptcy court.

**Receiver in Bankruptcy—Selection of Counsel.**—

The United States Circuit Court of Appeals, Second Circuit, has held, in *Matter of Strobel*, 20 Am. B. R., 22, that the selection of the attorneys or counsel who had appeared for either the bankrupt or the petitioning creditors, as counsel for the receiver while not expressly prohibited by the Bankruptcy Act, 1898, affords a ready opportunity for chicanery, fraud, and perjury; and the court suggests the desirability of the general adoption and rigid enforcement, by bankruptcy courts, of the rule in force in the Southern District of New York forbidding such selection.

## Supreme Court of the United States.

THE ALLEMANNIA FIRE INSURANCE COMPANY OF PITTSBURG, PENNSYLVANIA,  
PLAINTIFF IN ERROR,

v.

THE FIREMEN'S INSURANCE COMPANY OF BALTIMORE TO THE USE AND BENEFIT OF FRANCIS E. S. WOLFE, RECEIVER.

No. 120. October Term, 1907. Decided April 4, 1908.

IN ERROR to the Court of Appeals of the District of Columbia. Affirmed.

This action was brought by plaintiff, who is the defendant in error, in the Supreme Court of the District of Columbia for the purpose of recovering an amount alleged to be due the plaintiff from the defendant (plaintiff in error) on a policy of reinsurance. The plaintiff obtained judgment in the trial court, which was affirmed in the Court of Appeals of the District.

The plaintiff had originally insured the property which was destroyed, and had prior to the loss reinsured a proportion of the original insurance with the defendant company. After such reinsurance the plaintiff suffered heavy losses by reason of the great fire in the city of Baltimore in the month of February, 1904, for which losses it became liable, and was rendered thereby insolvent, and is unable to pay the same, unless the plaintiff is able to collect the amount due it from the defendant by virtue of its reinsurance policies, and from other corporate fire insurance companies with which plaintiff had contracts of reinsurance. By reason of the insolvency of the corporation a receiver was appointed, by a decree of the Circuit Court of Baltimore City, prior to the commencement of this action.

Upon the trial the plaintiff proved a cause of action against the defendant, unless the facts, which it also proved, that it had become insolvent by reason of the losses sustained by it incident to the Baltimore fire in 1904, and that a receiver had been appointed for it by the court in Maryland, and that the receiver had paid to its creditors, after this suit was brought, but fifty-five per cent of the amount of its liability, amounted to a defense.

The contract between the plaintiff and defendant was described therein as a "reinsurance compact," and in it the defendant agreed to "reinsure the Firemen's Insurance Company" in the amounts and manner therein stated.

There were contained in the compact, and forming part thereof, the following subdivisions:

"10. Upon receiving notice of any loss or claim under any contract hereunder reinsured the said reinsured company shall promptly advise the said Allemania Fire Insurance Company, at Pittsburg, Pa., of the same, and of the date and probable amount of loss or damage, and after said reinsured company shall have adjusted, accepted proofs of, or paid such loss or damage, it shall forward to the said Allemania Fire Insurance Company, at Pittsburg, Pa., a proof of its loss and claim against this company, upon blanks furnished for that purpose, by said Firemen's Insurance Company, together with a copy of the original proofs and

claim under its contract reinsured, and a copy of the original receipt taken upon the payment of such loss; and upon request, shall exhibit and permit copies to be made of all other papers connected therewith, which may be in its possession.

"11. Each entry under this compact, unless otherwise provided in this compact, shall be subject to the same conditions, stipulations, risks and valuation as may be assumed by the said reinsured company under its original contracts hereunder reinsured, and losses, if any, shall be payable pro rata with, in the same manner, and upon the same terms and conditions as paid by the said reinsured company under its contracts hereunder reinsured, and in no event shall this company be liable for an amount in excess of a ratable proportion of the sum actually paid to the assured or reinsured by the said reinsured company under its original contracts hereunder reinsured, after deducting therefrom any and all liability of other reinsurers of said contracts or any part thereof."

The defendant gave no evidence, but requested the court to instruct the jury as follows:

"No. 2. The jury are instructed that proof of mere liability on the part of the plaintiff under the original contracts or policies, involved in this suit, is not sufficient to entitle it to a verdict against the defendant; and the jury are therefore further instructed that they must return a verdict in favor of the defendant, unless they shall find from the evidence that the plaintiff has actually paid the whole or some part of one or more of the claims against it enumerated in the schedule annexed to the contract of reinsurance here sued upon.

"No. 3. The jury are instructed that if they find for the plaintiff, their verdict must not be for an amount in excess of a ratable proportion of the various sums actually paid by it to its policyholders under the original contracts or policies enumerated in the schedule attached to the declaration filed herein."

These instructions were refused and the refusal duly excepted to. Thereupon the jury, under instructions, returned a verdict in favor of the plaintiff for \$12,613.24, being the amount which it was conceded was due under the reinsurance compact, provided the fact of insolvency and nonpayment by the reinsured did not constitute a defense.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court:

The only question before the court is as to the construction of the language of the reinsurance compact. The term "reinsurance" has a well-known meaning. That kind of a contract has been in force in the commercial world for a long number of years, and it is entirely different from what is termed "double insurance," i. e., an insurance of the same interest. The contract is one of indemnity to the person or corporation reinsured and it binds the reinsurer to pay to the reinsured the whole loss sustained in respect to the subject of the insurance to the extent to which he is reinsured. It is not necessary that the reinsured should first pay the loss to the party first insured before proceeding against the reinsurer upon his contract. The liability of the latter is not affected by the insolvency of the insured or by its inability to fulfill its own contract with the original insured. The claim of the reinsured rests upon its liability to pay its loss to the original insured and

is not based upon the greater or less ability to pay by the reinsured. If the reinsured commenced his action against the reinsurer before he had himself paid the loss the reinsured took upon himself the burden of making out his claim with the same precision that the first insured would be required to do in an action against him. But there is no authority for saying that he must pay the loss before enforcing his claim against the reinsurer. These propositions are adverted to and enforced in *Hone, etc., v. The Mutual Safety Insurance Company*, 1 Sandf. Superior Court Reports, 137, where the authorities upon the subject are gathered and reviewed at some length. The case itself was subsequently affirmed in the Court of Appeals in 2 N. Y., 235. See, also, *Blackstone v. Allemannia Fire Insurance Company*, 56 N. Y., 104. The same doctrine is held in *Consolidated Real Estate, &c., v. Cashow*, 41 Md., 59.

Counsel for plaintiff in error frankly concedes that the legal propositions above stated are correct, and unless there is something in the special provisions of this reinsurance contract which changes the ordinary rule on that subject the judgment herein must be affirmed. Reference is made to the eleventh subdivision of the policy in question. Under the language of that clause the plaintiff in error contends that the general rule is altered, and that unless the reinsured has paid over the money on account of the loss, to the original insured, the reinsurer is not bound to pay under this particular contract of reinsurance. Language somewhat like that used in the eleventh subdivision has been construed in other cases. In *Blackstone v. Allemannia Fire Insurance Company*, supra, the language used was "loss, if any, payable pro rata, and at the same time with the reinsured." The Court of Appeals of New York held that the first part of the clause relieved the defendant from paying the full amount of the loss and made it liable only for its pro rata share, so that the defendant's reinsurance being for half the loss, the defendant was only held liable to pay half the loss. Continuing, the court said: "In regard to the latter branch of the clause in question, which says that the loss is payable 'at the same time with the reinsured,' it is not possible to conclude from it that actual payment by the reinsured is, in fact, to precede or to accompany payment by the reinsurer. It looks to the time of payability and not to the fact of payment. It has its operation in fixing the same period for the duty of payment by the reinsurer as was fixed for payment by the reinsured. To give it the construction contended for by the defendant would, in substance, subvert the whole contract of reinsurance as hitherto understood in this State."

In *Ex parte Norwood*, 3 Bias, 504, a clause in the reinsurance policy stated that "loss, if any, payable at the same time and pro rata with the insured," and it was held that such language simply gives to the company the benefit of any defense, deduction, or equity which the first insurer may have, making the liability of the reinsured the same as the original insured. It does not limit such liability to what the original insurer may have paid or be able to pay. Speaking of this clause Judge Blodgett said:

"The reinsuring company is to have the benefit of any deduction by reason of other insurance or salvage that the original company would have, and also to have the benefit of any time for delay

or examination which the original company might claim, so that the liability of the reinsuring company shall be coextensive only with the liability and not with the ability, so to speak, of the original company.

"The original company may have reinsured for the purpose for which reinsurance is usually, if not universally, accomplished—for the purpose of supplying itself with a fund with which to meet its obligations. It may have placed its own funds entirely out of its control; it may have divided its capital among its stockholders, and may depend solely upon the reinsurance to make good its liability to policyholders.

"The intention of this clause was to make the reinsuring company's liability coextensive, and only coextensive, with the liability of the original insurance company.

"For instance, suppose an insurance company in the city of Chicago wishes to go out of business. It has money enough to reinsure all its risks, and does so, and goes out of the insurance business. That company does not keep a fund on hand any longer for the purpose of meeting losses as they fall in, but depends upon its reinsurance.

"Now, it is to my mind absurd to say, if a loss occurs on one of those reinsured policies, that the company primarily liable is to have its claim against the reinsuring company limited by its ability to meet its obligations to its original policyholders. The very object of making the policy of reinsurance was to place the company in funds with which to make its policyholders whole, and that is defeated if the construction which is insisted upon by the assignee is the true one.

"The fair, liberal construction, it seems to me, of this clause, and the salutary one, is to assume that the true intent of it—the judicial meaning—is that the liability of the reinsurance company is to be no greater than that of the original company; that they are not to be compelled to pay any faster than the original company would be compelled to pay; that they are to have the benefit of any defense which the original company would have had. Any deduction—any equity—which the original company would have had against the original insured is to inure to the benefit of the reinsuring company.

"I am of opinion that the Republic is liable on these policies to the extent of the adjusted losses, even if the Lorillard had not paid a cent."

In *Cashau v. The Northwestern, etc., Insurance Co.*, 5 Biss., 476, in the reinsurance policy there was a clause that the reinsurer shall "pay pro rata at and in the time and manner as the reinsured." It was held that the reinsurer was to have all the advantages of the time and manner of payment specified in the policy of the reinsured, but that it had no reference to the insolvency of the reinsured. The court in that case said:

"The insolvency of the original insurer is no defense, in whole or in part, to a suit against the reinsurer. It is claimed on the part of the defendant that the condition in its policy is an exception to this position of the law. . . . The condition in that policy that 'in case of loss the company shall pay pro rata at and in the same time and manner as the reinsured,' can not mean that in case of the insolvency of the Fulton company the defendant shall only be obliged to pay the pro rata of the dividends of the assets of said

company, upon the claim of the first insured. It can not have such application. The condition means that the defendant shall pay at and in the same time and manner as the reinsured company shall pay or be bound to pay according to its policy, and the defendant shall have all the advantages of the time and manner of payment specified in the policy of the Fulton company, otherwise the defendant's policy would not be the contract of indemnity intended, and endless litigation might ensue."

Bearing in mind what the contract of reinsurance, pure and simple, means, and how these contracts have been enforced in the past when some special language has been introduced in regard to the payment under a reinsurance policy, the question arises whether, by the use of the language of the eleventh subdivision, the contract of reinsurance, while still bearing that name, has been so changed as to deprive it of its chief value. As is stated by Judge Johnson, in regard to the language used in 56 N. Y., supra, to give this language this construction will, in substance, subvert the whole contract of reinsurance as hitherto understood. We agree with the court below, that the language of the eleventh subdivision, taken in connection with the fact that it is used in a contract designated by the parties as one of reinsurance, means that the reinsuring company shall not pay more than its ratable proportion of the actual liability payable on the part of the reinsured, after deducting all liability of other reinsurers.

To hold otherwise is to utterly subvert the original meaning of the term reinsurance and to deprive the contract of its chief value. The losses are to be payable pro rata with, in the same manner and upon the same terms and conditions as paid by the reinsured company under its contracts. This means that such losses, payable pro rata, are to be paid upon the same condition as are the losses of the insurer payable under its contract. And the liability of the reinsurer shall not be in excess of the liability of the insurer under its original contracts, after deducting therefrom any and all liability of other reinsurers of the contract of the insurer or of any part thereof. It is the ratable proportion for which the other reinsurers are liable, that provision is made for deducting, and the liability of the insurer means such liability after that deduction, and does not mean there must be an actual payment of such liability by the insurer before it can have any benefit of the contract of reinsurance which is made with defendant.

Subdivision 10 of the contract does not result in any different conclusion.

This subdivision does not and can not mean that there is to be no liability unless the reinsured should pay the loss sustained. The reinsured company under its provisions is bound to forward to the reinsuring company a statement of the date and the probable amount of loss or damage, and it is provided that after the reinsured company shall have adjusted, accepted proofs of, or paid such loss or damage, it shall forward the proof of its loss and claim and a copy of the receipt taken for payment. It means that if the loss or claim has been in fact paid, then a copy of the receipt is to be sent, but it does not mean that there must be payment before any liability on the part of the reinsuring company exists.

We do not think that the language of these two



subdivisions was intended to entirely nullify and tear up by the roots the construction given to the contract of reinsurance for so many years throughout the civilized world and upon which its chief value is based. The nature of the contract is accurately described in its commencement. It is described as a "compact of reinsurance," and there has been no doubt as to the meaning of such contract for the last two centuries. The judgment of the Court of Appeals is right, and is affirmed.

**Waiver in Contract of Life Insurance of Privilege Against Physician's Testimony.**

[New York Law Journal.]

In *Metropolitan Life Insurance Co. v. Brubaker*, in the Supreme Court of Kansas (May, 1908, 96 Pac., 62), it was held that "an applicant for life insurance may make a valid contract with the insurer, waiving the privilege afforded him by section 323 of the Code of Civil Procedure (Gen. St., 1901, sec. 4771), which renders a physician incompetent to testify to professional communications from his patient and knowledge of his patient obtained in a professional way."

The quoted extract is from the syllabus by the court, and "section 323" referred to is of the Code of Civil Procedure of Kansas. The following is from the opinion:

"The application contains the following agreement: 'The provisions of section 834 of the Code of Civil Procedure of the State of New York, and of similar provisions in the law of other States, are hereby waived; and it is expressly consented and stipulated that in any suit on the policy herein applied for any physician who has attended or may hereafter attend the insured may disclose any information acquired by him in anywise affecting the declarations and warranties herein made.' Section 834 of the New York Code forbids a physician to disclose any information which he acquires in attending a patient in a professional capacity. The corresponding provision of the law of this State is section 323 of the Code of Civil Procedure (Gen. St., 1901, sec. 4771), which reads as follows: 'The following persons shall be incompetent to testify: . . . Sixth. A physician or surgeon, concerning any communication made to him by his patient with reference to any physical or supposed physical disease or any knowledge obtained by a personal examination of any such patient; provided, that if a person offer himself as a witness that is to be deemed a consent to the examination also of an attorney, clergyman, or priest, physician or surgeon on the same subject.' Section 836 of the New York Code requires that any waiver of the provisions of section 834 must be made upon the trial or examination in which the question of competency arises. The statutes of this State do not so provide.

"It is insisted the contract is a New York contract, and must be construed according to the laws of that State. The New York statutes referred to relate to procedure and to procedure in that State only. They do not undertake to regulate procedure in this State or to limit the right of parties to contract with reference to privileges granted by the laws of this State. If the trial had occurred in New York the procedure there would have been followed, and the stipulation would have been ineffectual. Since it occurred in this State the only

question is if the waiver is good under the law here. The statute quoted contemplates that the patient may consent to this physician's testifying. Therefore no question of public policy is involved. The public policy of the State does not depend upon the will of individuals who are free to act as circumstances may suggest them. It is elementary law that communications made in professional confidence are not incompetent. If a third person hear them he may testify. The disqualification is imposed upon the lawyer, physician or priest only, and not for his benefit, or for the benefit of the public, but merely as a privilege to the client, patient or person confessing. This privilege, like many others, even those protected by constitutional guaranty, may be waived. By statute, if the party himself testify, the privilege is waived. If he publish the confidential matter to the world the privilege is waived (see *In re Elliott*, 73 Kan., 151, 84 Pac., 750; *In re Burnette*, 73 Kan., 609, 85 Pac., 575). And it would deprive him of a valuable right if he were prohibited from making a waiver by contract in advance of litigation. The privilege may be waived like all other privileges. It is astonishing to find this question could ever have been regarded debatable. Nothing but a confusion of fundamental ideas could ever create any doubt. . . . That a waiver may be irrevocably made by contract before litigation begun has generally been conceded by the courts. It should certainly be sanctioned unless made under conditions of duress or fraud, which would have rendered the contract in other respects voidable' (*Wigmore on Evidence*, vol. 4, sec. 2388)."

The court is clearly right as to the effect—or rather the absence of effect—of section 836 of the New York code upon the trial of an action in the courts of Kansas. Unfortunately it is probably also right in remarking that "if the trial had occurred in New York the procedure there would have been followed and the stipulation would have been ineffectual." We say this in view of the decision of the Court of Appeals in *Holden v. Met. Life Ins. Co.*, 165 N. Y., 13, reversing the Appellate Division in the same case. 11 A. D., 426. The Court of Appeals held that an express waiver in an application for a policy of life insurance (the same being by its terms a part of the contract) of the provisions of section 834 of the Code of Civil Procedure, made by the insured after the amendment in 1891 to section 836, providing that such a waiver could be made only upon "the trial or examination" by his personal representatives, had taken effect, is ineffectual to permit disclosures by a physician of information which he acquired in attending the insured in a professional capacity.

We have grave doubt whether the legislature ever intended the amendment of section 836 to have the broad scope which the Court of Appeals has given to it. The Supreme Court of Kansas suggests that "the New York statutes referred to relate to procedure." If the application of section 836 was so confined it would not interfere with the recognition of a waiver of the privilege against a physician's testimony made part of the original complaint. In the language above quoted Professor Wigmore states that an irrevocable waiver by contract before litigation is begun has been generally upheld by the courts; citing *Keller v. Ins. Co.*, 95 Mo. App., 627; *Fuller v. Knights of Pythias*,

129 N. C., 318; *Andrews v. Mutual, &c., Ass'n.*, 34 Fed., 870. Even in view of the change in 1891 in the New York statute law there is much force in the following language from the opinion of the Appellate Division in *Holden v. Met. Life Ins. Co.*, 11 A. D., 426, 431:

"The waiver is one of the provisions of the contract, inserted for the benefit of the defendant, and in reliance upon which the defendant presumptively entered into the contract. The plaintiff, seeking the benefits of the contract, must accept the burdens. She can not repudiate any of its provisions which entered into the consideration of the company's promise. It should, I think, be held that the plaintiff is estopped from claiming any benefit from the provisions of section 834."

Nevertheless, the decision by the Court of Appeals in the Holden case was unanimous, and it would seem that the only remedy for the situation in New York must be a further amendment expressly limiting the application of the sections of the Code to matters of procedure, so as not to control conditions which parties may elect to insert in the contract itself. The Court of Appeals, in the Holden case, gives as the probable reason of the amendment of 1891 that "the apparent purpose of that amendment was to protect parties, their representatives and successors from waivers which should be inadvertently or improperly obtained previously to the trial of an action or examination of the witness. That in many cases injustice had resulted from such waivers having been previously obtained by a species of fraud or duress was doubtless the reason which induced the legislature to adopt this amendment requiring the waiver to be made in the presence and under the supervision of the court before which the trial or examination was had."

The very form of this language suggests procedure, and the dangers and disadvantages pointed out would scarcely have to be especially guarded against as to a stipulation adopted as an element of a written contract.

In our opinion the New York statutes should be so modified as to bring the substantive law of this State into harmony with the general current of authority. The New York law as interpreted by the Court of Appeals practically inhibits waivers of the privilege as an integral part of life insurance contracts.

**Corporations—"Engaged Principally in Manufacturing"—Making Concrete Work.**—It has also been held, in *Hall & Kaul Co. v. Friday*, 19 Am. B. R., 841, that a corporation engaged in the business of "making, constructing, and erecting concrete arches, bridges, buildings, wall, and other structures," which, when erected in situ, were attached to and became a part of the real estate is not subject to adjudication as a bankrupt.

**Bankrupt Corporations—Real Estate Company.**—In the case of *Matter of Estate Realty Co.*, 19 Am. B. R., 845, it has also been held that a corporation organized to carry on the purchasing, holding, improving by grading, paving, sewerage and construction of houses and other buildings and the selling of real estate, is not subject to adjudication in bankruptcy, although it engaged in some incidental and possibly ultra vires transactions.

#### **Innkeepers; Who Are?; "Public Hotel."**

[New York Law Journal.]

In *Nelson v. Johnson*, in the Supreme Court of Minnesota (June, 1908, 116 N. W., 828), it appeared that the defendant held out his house, of which he was the keeper, as a hotel in which furnished rooms were to let for a single night or longer time. In the regular course of business he let without special contract, at stipulated prices, rooms therein, for a single night or a longer time as was desired, to all who applied in a fit condition to be received. He kept an office therein, which was in charge of clerks and open at all hours for the reception of guests, in which a register was kept for the guests to inscribe therein their names and addresses. There were not maintained at or in connection with the house any facilities for supplying guests with food and none was furnished to them by the defendant. It was held that the house was a public hotel and that the defendant as keeper thereof was liable to the plaintiff, a traveler who was a guest therein, for money stolen in the nighttime from him while he was in his room, without the negligence of either party. The court said in part:

"The reasons for this conclusion can not be better stated than they were by the learned trial judge in his able and helpful memorandum: 'It seems to me impossible to suggest any reason why, upon principle, the extreme degree of liability should or should not be imposed upon the keeper of a place where the traveling public are offered lodgings, according as he does or does not furnish meals for his lodgers. . . . The need for protection to the traveler's property is incident to his lodging and not to his eating. It is while he is asleep in his bed and his personal belongings are unguarded by his own watchfulness, that for the security of his property he needs to invoke the most stringent rules of the law of bailment. Especially in large cities does he need this protection. The exigencies of travel bring him often to unfamiliar places and at hours and under conditions when investigation is impracticable. He must go for bed and shelter to the place which he finds open for his accommodation, trust himself and his property to a stranger, and accept practically without opportunity for selection the quarters assigned to him. The rush and turmoil of the city afford to the thief his most attractive field of operation, and the stranger more than others is exposed to his depredations. . . .

These considerations lead to the conclusion that the necessities of modern life demand that the extreme degree of responsibility for the property of the guest be applied to the keeper of a place of entertainment for travelers, according to the essential features of the relation, and not in fixed adherence to old definitions, or according to the name by which the place is known—whether "inn," "hotel" or "lodging house."

"It is, however, stated in many of the text-books and encyclopedias that a place which does not furnish the traveler with both lodging and food is not an inn. Nearly all of the adjudged cases cited in support of this proposition rely upon the very interesting opinion of Judge Daly, in the case of *Cromwell v. Stephens*, 2 Daly (N. Y.), 15, in which it is stated that a mere lodging house, in which no provision is made for supplying lodgers with their meals, wants one of the essential requisites of an inn. The question at issue in that case

was not whether the proprietor of the house was liable to his guests as a keeper of a common inn, but whether the house was a hotel within the meaning of an ordinance fixing water rates for hotels. An examination of the cases cited in that opinion raises a grave doubt whether facilities for furnishing guests with meals was, even at the time the decision was made, an essential requisite of a hotel. However this may be, the question is an open one. Mr. Schouler says: 'Whether the utter omission to provide a place for meals on the premises is enough to take a house for transient lodgers out of the legal fellowship of inns is not clearly determined. Schouler on Bailments; sec. 278. The question here under consideration was before this court in the case of *Johnson v. Chadbourne Co.*, 89 Minn., 310, 94 N. W., 874, 99 Am. St. Rep., 571, but was not directly decided, for the reason that there was a restaurant connected with the hotel in question in that case, although it was not owned or controlled by the proprietor of the hotel. The logic of that case, however, leads directly to the conclusion that supplying guests with meals is not now one of the essential requisites of a hotel, in order to charge the proprietor thereof with the liability of a keeper of a common inn; and we so hold.

"There is a clear distinction between a mere private lodging house and a hotel where no meals are served. Such a hotel or inn is a house the proprietor of which 'holds out that he will receive all travelers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received.' The keeper of such a house is bound, without making any special contract therefor, to provide for all, to the limit of his facilities, at a reasonable price; but the proprietor of a private lodging house is not bound to receive all who apply, but he has the right to select his guests, contracting specially with each. The facts found in this case clearly justify the conclusion of law that the defendant was liable as the keeper of an inn or hotel."

**Jurisdiction—Property Held Under Writ of Replevin Prior to Bankruptcy.**—In *Matter of Rudnick & Co.*, 20 Am. B. R., 33, the United States Circuit Court of Appeals, Second Circuit, has held that where the sheriff, in an action pending in a State court, holds property in replevin taken by him prior to bankruptcy proceedings, under claim of ownership, the bankruptcy court has not jurisdiction, by summary order to compel the sheriff to deliver the property to a receiver in bankruptcy. This seems to be a novel proposition. In arriving at its conclusion the court held that section 67f of the Bankruptcy Act, invalidating levies, judgments, attachments and liens obtained within the four months period and providing that the property so affected shall pass to the trustee as part of the estate of the bankrupt, deals only with his property, and does not apply in such case.

**Bankrupt—Restraining Corporation.**—In *Matter of Wentworth Lunch Co.*, 20 Am. B. R., 29, it has been held that a company authorized by its certificate of incorporation to manage, conduct, and carry on a restaurant and saloon wherein are distributed foods and liquors at retail to be consumed upon the premises, is not subject to adjudication as a bankrupt.

#### **Barber Shop Not a Place of "Public Accommodation."**

An interesting question was recently decided by the Supreme Court of Connecticut, in the case of *Faulkner v. Solazzi*. It appeared that under the acts of 1905, of that State, Chapter III, a colored person was given a right of action against any other person, who should deprive him, on account of his color, of "full and equal enjoyment of the advantages, facilities, accommodations, or privileges of any place of public accommodation."

The plaintiff, a colored man, sued the defendant, a barber, for refusing him, on account of his color, the privileges and accommodations of the latter's shop. It appeared that the barber could not practice his trade in Connecticut without a license, and that his shop was under sanitary regulation and subject to sanitary inspection by a State board.

The defendant filed a demurrer to the declaration, which the lower court sustained, on the ground that a barber shop was not a place of "public accommodation," within the meaning of the act. Judgment on the demurrer, in favor of the defendant, was affirmed on appeal. The court said in part: "It is equally clear that the common law has never recognized barber shops as possessing that peculiar public quality, as places of public accommodation, which is attached to hotels and common carriers, or as owing that duty to individuals which is imposed upon the latter. *Burks v. Bosso*, 180 N. Y., 341, 73 N. E. Rep., 58. If so, the plaintiff would be under no necessity of resorting to the statute for redress.

"There remains to consider whether there is anything about a barber shop which fairly entitles the accommodations it furnishes to be denominated, in some popular sense which might enter into the construction of the statute, as 'public,' as signifying a distinction between them and those furnished by the great majority of other forms of purely private business. The proprietor of a barber shop seeks private gain by the maintenance of a place of business which appeals to the members of the public for patronage and support. That appeal is often reinforced by sign or symbol attracting attention to his calling. Within he seeks to serve his patrons and minister to their convenience and comfort. If he is enterprising he endeavors to enlarge the field of his patronage, and to that end attempts to accommodate with satisfactory service. The assurance of success is found in the satisfaction of a public want and in the accommodation given. Wherein in all this does his service or place of service differ from either the service or place of service of every other man who keeps an office, shop, or other place where personal attention in any line is given to patrons who desire the ministrations afforded? Is he in any different position from the physician, the dentist, the manicurist, the chiropodist, the massage giver, the Turkish bath proprietor, etc.?"

"Wherein, to go a step further, does his business differ in essence from that of every shopkeeper or tradesman, unless it be in the personal feature of the service rendered, and that would seem rather to suggest a reason why such an employment should not, both for the sake of the service giver and receiver, be among the first selected to be deprived of the right of selection of patrons.

"In a sense, every business which has a promise of success within it is one which appeals to a public need, and in the sense that it supplies a need

it is for the public accommodation. But the term 'public accommodation,' as descriptive of places within the purview of the act, clearly was not chosen as one to be interpreted in any such all-embracing sense.

"The statute plainly embodies an attempt to discriminate between different forms of business and to select certain only for the operation of the statute. No basis for that discrimination can be found in the descriptive language employed, except the well-understood one which the common law recognizes, and which is aptly indicated by that language."

**Bankrupt—Real Estate Company.**—In Matter of Altonwood Park Co., 20 Am. B. R., 31, it has also been held that a corporation whose principal business is the holding of undeveloped real estate is not subject to adjudication as a bankrupt.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Jas. E. Padgett, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Richard Emmons, Deceased.

No. 14,351. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara L. P. Emmons, it is ordered this 20th day of July, A. D. 1908, that Howard O. Emmons, John E. Emmons, and Earl Emmons, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

R. R. Horner, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Arthur Simmons, Deceased. Probate No. 15,128.

Application having been made by Alice Simmons for the probate of the last will and testament of Arthur Simmons, deceased, and for letters testamentary thereon, it is by the court, this 23d day of July, A. D. 1908, ordered that Hannah A. Simmons, and all others concerned appear in said court on or before the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 30-St

### Legal Notices.

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Caroline Miller, Deceased.

No. 15,387. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by National Savings and Trust Company, it is ordered this 21st day of July, A. D. 1908, that Emma J. Bell, Arthur Williams, John S. Wood, James Michael, Charles Shafer, George McElliott, Rebecca Garner, Harriet Crouse, Lewis Myers, Kate Athey, Elizabeth Fenlon, Mollie Sprague, Katie Buckwalter, Charles F. Boyer, Samuel K. Boyer, Carrie F. Toland, Noble G. Toland, Arthur De Toland, Emory B. Toland, and the unknown heirs at law and next of kin of said Caroline Miller, and all others concerned, appear in said court on Wednesday, the 2d day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

Carlisle & Luckett, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In Re Estate of Juliana Walker Gales, Deceased.

No. 15,364. Administration Docket.

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by John McClellan and Oscar Luckett, it is ordered this 17th day of July, A. D. 1908, that William V. Marmion, Mary Lee Bolbrugge, Juliana Gales Torno, Frederick Wupperman McClellan, Rose Lee Walker McClellan, Josephine Frances Johnston McClellan, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal.] THOS. H. ANDERSON, Justice. A true copy. Attest: James Tanner, Register of Wills. 30-St

Oscar Nauck, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry Jaeger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. ARMIN JAEGER, 76 Harford Road, Baltimore, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,219. Administration. [Seal.] 30-St

W. C. Martin, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Emily Haines, alias Haynes, Deceased.

No. 15,353. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with a copy of the will thereto annexed, on said estate, by Martha Gant, it is ordered this 16th day of July, A. D. 1908, that Henry Jackson, Robert Jackson, and James Jackson, and all others concerned, appear in said court on Tuesday, the 18th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

**Legal Notices.**

W. M. Ellison, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. EMMA E. LANE, 1410 Penn. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,406. Administration. [Seal.] 30-St

E. H. Thomas and James Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In Re Condemnation of Land Necessary for the Rights of Way for the Continuation of the East Side Intercepting Sewer. District Court, No. 774.

On consideration of the petition of the Commissioners of the District of Columbia, filed in the above-entitled cause, and on motion of counsel for said commissioners, it is, by the court, this 21st day of July, A. D. 1908, ordered, that the clerk of this court issue a citation to Tenney Ross, Mildred Ross, Georgetowne Ross, Lee Ross, James H. Vermilya, J. B. Bailey, Christian Heinrich, Benjamin F. Mathiot, Emma Victoria Hill and Harvey Mathiot (owners), to appear in this court on the 4th day of August, A. D. 1908, at 10 o'clock A. M., to answer said petition, and to show cause why the prayers thereof should not be granted, and why the right of way through parcels 162-2, 162-4, 162-6, 162-3 and 167-1, as recorded for purposes of assessment and taxation in the office of the surveyor of the District of Columbia, and more particularly described in the petition filed herein, should not be condemned for the purpose of providing a right of way for the continuation of the east side intercepting sewer in the District of Columbia. It is further ordered that a copy of said citation be served by the United States marshal for the District of Columbia upon such owners of the land sought to be condemned herein, and such persons interested therein, as may be found by said marshal, or his deputies, within the District of Columbia, and it is further ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the said 4th day of August, A. D. 1908, to answer said petition, and to continue in attendance until the court shall have made its final order ratifying and confirming the award and report of the commissioners to be appointed by the court to appraise the value of the respective interests of all persons concerned in the land and premises mentioned and described in the aforesaid petition. It is further ordered, that a copy of this order be published once in The Washington Law Reporter, and on six secular days in The Washington Evening Star, The Washington Post, and The Washington Herald, newspapers published in the said District, before the said 4th day of

[Seal] August, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell (Signed), Asst. Clerk. 30-St

**SECOND INSERTION.**

John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate of the District of Columbia letters testamentary on the estate of Persis A. Cleveland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the 10th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Elchelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,178. Administration. [Seal.] 29-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

Rudolph H. Yeatman, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Y. Potts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. LEVIN J. WOOLLEN, 310 W. st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,898. Administration. [Seal.] 29-St

Hill, Roger & Mattingly, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie Louise Allen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. M. JENNIE McELFRESH, 1004 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,865. Administration. [Seal.] 29-St

M. J. Colbert, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Killigan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. THOMAS J. KILLIGAN, No. 1718 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,838. Administration. [Seal.] 29-St

W. F. Mattingly and W. C. Clephane, Attorneys  
In the Supreme Court of the District of Columbia.  
Maria G. Dewey, Complainant, v. William B. Todd et al., Defendants.

No. 26,880. Equity Dec. —

The object of this suit is to obtain a decree authorizing the complainant to pay into court such sum of money, if any, as is properly payable by her, in excess of the aggregate of the balance of the personal estate of Marianne A. B. Kennedy, deceased, which has already come and may hereafter come into the hands of the executor of her estate, as may be determined by the court necessary to satisfy and pay the legacies bequeathed by the will of said decedent, after deducting from said funds all debts, funeral expenses, and costs of administration; and upon payment by said complainant as aforesaid, that said executor be directed to execute to her a deed in fee to certain real estate known as 715 Market Space, Washington, D. C.; and incidentally for such accounting and orders as may be necessary. On motion of the complainant it is, this 10th day of July, 1908, ordered that the defendant, May Bacon, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week

[Seal] for three successive weeks in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 30-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

W. H. Sholes, Attorney

In the Supreme Court of the District of Columbia.

Elizabeth S. Danenhower et al., Complainants, v.  
Joseph L. Danenhower et al., Defendants.

Equity No. 77,857.

The object of this suit is to sell original lot five (5) and the west 8 feet 8 1/2 inches front by the full depth thereof of original lot four (4) in square two hundred and fifty (250), in the city of Washington, District of Columbia, and reinvest the proceeds as provided in section 100 of the Code of Laws for said District. On motion of complainants. It is this 14th day of July, A. D. 1908, ordered that the defendants, Joseph L. Danenhower, William J. Danenhower, Rebecca E. Gallagher, Frank G. Danenhower, Mary E. Bryant, Clarence E. Danenhower, John H. Danenhower, an infant; Joseph L. Danenhower, an infant; Elizabeth Rust, Francis Danenhower, Laura Green, Marshall Philip, an infant, and Ethel Philip, an infant, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order

[Seal] be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-31

Duane E. Fox and Geo. Francis Williams, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William L. Ralph, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. LOUISE M. RALPH, Care Fox & Williams, Washington Loan and Trust Company, Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,200. Administration. [Seal.] 29-31

In the Supreme Court of the District of Columbia.  
George J. Greenfield, Executor of the Last Will and Testament of Charlotte E. Williams, Deceased, Complainant, v. Mary G. Mew et al., Defendants.  
Equity No. 25,986.

William M. Lewin, trustee in the above-entitled cause, having reported to the court that he has sold the real estate in said cause involved, to wit, the east 22.1 feet of part of lot numbered three (3) in square numbered three hundred and seventeen (317), with improvements thereon, the said property being premises numbered 1115 I street northwest, in the city of Washington, in the District of Columbia, for the sum of eighty-eight hundred and seventy dollars (\$8870.00), it is this 15th day of July, A. D. 1908, ordered that such sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of August next. Provided a copy of this order be inserted in The Washington Law Reporter once in each of three

[Seal] successive weeks before the said day last hereinafter mentioned. By the Court: WRIGHT, Associate Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-31

Allen C. Clark, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Helen W. Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. ANNIE WORRELL, care of Allen C. Clark, 606 F. St. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,407. Administration. [Seal.] 29-31

**Legal Notices.**

[Filed July 13, 1908.]

A. Leitch Sinclair, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys, Authorized by the Act of Congress, Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company in the District of Columbia.  
District Court No. 671.

Notice is hereby given that we, the undersigned, have been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress, approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Tuesday the Twenty-second day of September, A. D. 1908, at the United States courthouse (City Hall), in said District, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the real property affected by the changes made in the grades of the following named streets, avenues, and alleys in said District and hearing testimony touching the damages resulting to said property from said changes of grade, pursuant to the terms and provisions of an act of Congress approved June 20, 1906, entitled, "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: South Capitol street from D street to Canal street; Sixth street southwest, between D street and School street; C street southwest, between Sixth street and Seventh street; Virginia avenue southwest, between Sixth street and Seventh street; D street southwest, between Sixth street and Sixth and One-half (3/4) street; Seventh street southwest, between D street and Maryland avenue; C street southwest, between Seventh street and Eighth street; the alleys in square numbered four hundred and sixty-four (464); Tenth street southwest, between Maryland avenue and C street; Maryland avenue southwest, between Ninth street and Eleventh street, and Fourteenth street southwest, between D street and Water street. All owners of real property damaged by the changes made in the grades of any of said streets, avenues, or alleys will file a petition with us, in this cause, duly signed and sworn to, for an allowance of damages within twelve months after the said twenty-second day of September, A. D. 1908. It is provided in and by the aforesaid act of Congress, approved June 20, 1906, that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine. CHARLES [Seal] A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission Appointed to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 29-31

Sheehy & Sheehy, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as an Equity Court.  
In the Matter of the Dissolution of The American Home Life Insurance Company, a Corporation.  
In Equity No. 27,928.

Upon consideration of the petition filed in the above entitled matter by James H. Vermilya, Charles T. Yoder and James H. Caton praying for a dissolution of The American Home Life Insurance Company, a corporation chartered under the laws of the District of Columbia, it is, by the court, this 14th day of July, A. D. 1908, ordered that all persons interested in said corporation appear in the Supreme Court of the District of Columbia, by the 25th day of August, A. D. 1908, and show cause, if any they have, why said corporation should not be dissolved as prayed. Provided that a notice of this order be published in The Evening Star, a newspaper of general circulation, weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid, and that said notice, also, be published in The Washington Law Reporter.

[Seal] WRIGHT. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-31

Justice blanks of every description for sale at this office.



**Legal Notices.**

Edward S. Bailey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Adella L. S. Thombs, Deceased.  
No. 15,810. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles H. Horton and Benjamin G. Pool, executors named in said last will and testament, it is ordered this 14th day of July, A. D. 1908, that Belle Shaw, Lizzie Barton Kingsley, John W. Wright, Alfred G. Wright, Adeline Scott, Ami Farnham, Mrs. G. W. Sylvester, Mrs. Miller, Effie M. Bunnell, Lida L. Ripley, and all the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Thursday, the 20th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-St

R. P. Shealey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James H. McGill, Deceased.  
No. 15,821. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert Preston Shealey and Samuel A. Drury, it is ordered this 18th day of July, A. D. 1908, that John L. McGill and Charles McGill, and all others concerned, appear in said court on Monday, the 17th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-St

H. S. Matthews, Solicitor  
In the Supreme Court of the District of Columbia.  
James B. Nourse et al., Complainants, v. Rosa Chew Williams et al., Defendants.  
In Equity, No. 27,866. Docket No.—.

The object of this suit is to obtain the sale for the purpose of partition, of all that certain tract of land situate in the District of Columbia and known as the "Highlands," said tract being located on the east side of Wisconsin avenue and containing 23 and 437-1000 acres; also, lot 91 in William J. Partello's subdivision of lots in square 229 in the city of Washington, District of Columbia. On motion of the plaintiffs, it is, this 15th day of July, A. D. 1908, ordered that the infant defendants, Mary F. Nourse, Charlotte St. G. Nourse, Walter F. Nourse, Charles J. Nourse, Jr., and Juliette L. Nourse, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.  
[Seal] WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

Newton & Gillette, Solicitors  
In the Supreme Court of the District of Columbia.  
Sarah Parsley et al. v. William T. Collins et al.  
No. 27,897. Equity Doc. 61.

The object of this suit is to obtain a decree for partition by sale of part lot thirteen in square four hundred and five in the city of Washington, in the District of Columbia, as described in the bill in this cause. On motion of the complainants, it is, this 15th day of July, 1908, ordered that the defendant, William T. Collins, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.  
[Seal] WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

**Legal Notices.**

Archer & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maurice J. Soule, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. CLARA E. SOULE, 1806 Corcoran st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,243. Administration. [Seal.] 29-St

Wm. L. Pollard, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alice Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. ANNIE T. BROWN, 413 You st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,255. Administration. [Seal.] 29-St

G. Percy McGlue, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Denis McKeown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1908. PATRICK McKEOWN, 1404 S st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,218. Administration. [Seal.] 29-St

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of J. Henley Smith, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a probate court, appointed Monday, the 10th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 15th day of July 1908. MARY R. HENLEY SMITH, CLAUDIAN B. NORTROP, and AMERICAN SECURITY AND TRUST COMPANY, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,520. Administration. [Seal.] 29-St

Carlisle & Luckett, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Barry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of July, 1908. MARGARET BARRY 1013 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,403. Administration. [Seal.] 29-St

**Legal Notices.****THIRD INSERTION.**

C. C. James, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Robert T. Fywell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of July, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of July, 1908. MARTHA E. FYWELL, 1001 Eleventh st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,108. Administration. [Seal.] 28-31

William A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Amanda D. Allen, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,194. Administration. [Seal.] 28-31

Raleigh Sherman, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of William A. Wroe, Deceased.

No. 15,113. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Raleigh Sherman, it is ordered, this 7th day of July, A. D. 1908, that Mrs. Adele Keane, Bertie Wroe, Ida Wroe, Daisy Wroe, Mary Kellar, Nellie Willett, Evelyn Willett, Marcel Radabaugh, Ida Rowly, and all unknown heirs at law and next of kin, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

[Seal] tioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

Chapin Brown, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Chas. S. Denham, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Wednesday, the 29th day of July, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 7th day of July, 1908. LEWIS C. DENHAM, Executor, by Chapin Brown, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,498. Administration. [Seal.] 28-31

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**Legal Notices.**

John B. Lerner, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

J. Edward Chapman, Complainant, v. the Unknown Heirs, Allenees, and Devisees of Charles G. Paleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, Deceased, Defendants.

Equity, No. 27,859.

The object of this suit is to establish the title of the complainant by adverse possession to original lot numbered twenty-five (25), in square numbered four hundred and ninety-nine (499), of the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of July, 1908, ordered that the defendants, the unknown heirs, allenees, and devisees of Charles G. Paleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, all deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington

[Seal] Law Reporter and The Evening Star before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-41

Edward L. Gies, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Magdalena Eichner, Deceased.

No. 15,357. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Michael A. Mess, it is ordered this 8th day of July, A. D. 1908, that the unknown heirs at law and next of kin of said Magdalena Eichner, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

Erskine Gordon, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Anna R. Green, Deceased.

No. 15,306. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William A. Gordon and J. Holdsworth Gordon, it is ordered this 8th day of July, A. D. 1908, that Esdie G. Gandell and Rose Quisenberry, and all others concerned, appear in said court on Tuesday, the 11th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before [Seal] said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

Irwin B. Linton, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Sarah S. Condit Smith, Deceased.

No. 15,365. Administration Docket —

Application having been made herein for probate of the last will and testament and two codicils of said deceased, and for letters testamentary on said estate by Irwin B. Linton, it is ordered, this 8th day of July, A. D. 1908, that Mary L. Whitney and Isabelle de Milt MacCreery, and all others concerned, appear in said court on Monday, the 10th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James

Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 28-31

**Legal Notices.**

**Marion Duckett & Son, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maria F. Dare, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 9th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 9th day of July, 1908. ELIZABETH B. SOTHORON, 221 A St. S. E.; ELLA BELT BERRY, 221 A St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,380. Admin. [Seal.] 28-3t

**Chas. H. Bauman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Lavenia V. Staples, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Friday, the 31st day of July, 1908, at 10 o'clock, A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 9th day of July, 1908. CHARLES SCHAFER, Executor, by Chas. H. Bauman, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,523. Administration. [Seal.] 28-3t

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of July, 1908. FREDERICK A. FENNING, 4125th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,284. Administration. [Seal.] 28-3t

**Chas. H. Cragin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Allen Dodge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 3d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 3d day of July, 1908. CHARLES H. CRAGIN, 321 4 1/2 St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,179. Administration. [Seal.] 28-3t

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of William C. Drury, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 7th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 7th day of July, 1908. HOSEA B. MOULTON, Washington Loan and Trust Building; WM. E. AMBROSE, 468 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,308. Administration. [Seal.] 28-3t

**Legal Notices.**

**R. E. Mattingly, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding Equity Court.**

**Lorena B. White, Complainant, v. James A. White and Mary Gavin Flynn, Defendants.**  
 Equity No. 27,855.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 7th day of July, A. D. 1908, ordered that the defendants, James A. White and Mary Gavin Flynn, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that this order be published once a week for three successive weeks in The Washington Herald and The Washington Law Reporter. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-3t

**FIFTH INSERTION.**

**E. A. Jones and G. O. Shinn, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devisees, and Allenees of such of them as are dead; and the Unknown Heirs, Devisees, and Allenees of Julianna Barry, Deceased.**

In Equity, No. 27,648.  
 ORDER OF PUBLICATION.

The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and allenees of such of them as are dead; and the unknown heirs, devisees, and allenees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 28; june 19, 28; july 24, 31.

**W. L. Pollard and M. N. Richardson, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court for Said District.**  
**George A. Scott, Complainant, v. Henry Schroeder et al., Defendants.**  
 Equity No. 27,627.

The object of this suit is to declare the title to part of lot 13, in square 1010, in the District of Columbia, being the 14 feet front next to the north 72 feet front on 18th street by the full depth of 90 feet of said lot, being the same property conveyed to complainant by deed in lib 829, folio 69, et seq., of the land records of the District of Columbia, to be good in fee simple in the complainant by reason of adverse possession thereof, for more than twenty-two years. On motion of the complainant, it is this 23d day of June, A. D. 1908, ordered that the defendant, Henry Schroeder, if living, or if dead, the unknown heirs, allenees, and devisees, if any, of said Henry Schroeder, cause their appearance to be entered herein on or before the first rule day occurring five weeks after the first publication of this order, good cause for fixing such time having been shown to the satisfaction of the court; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published at least once a week in five successive weeks prior to said return day in The Washington Law Reporter and The Evening Star.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 28-5t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - JULY 31, 1908

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### Lease; Construction of Contract of Guaranty of Payment of Rent.

In *Kanouse v. Wise*, decided by the Supreme Court of New Jersey in June, 1908 (69 Atl., 1017), it appeared that a landlord leased to his tenant certain property for the term of one year, "with the privilege to renew this lease upon the same terms and conditions for a further period of four years." The defendants became "surety for the punctual payment of the rent in the above-written agreement mentioned to be paid . . . as therein specified, and if any default shall at any time be made therein we do hereby promise and agree to pay . . . the said rent or any arrears thereof." In an action against the sureties, it was held, construing the contract, that their liability ceased at the expiration of the year for which the lease was originally made, except as to rent unpaid for that period, and that they were not bound as sureties should the tenant exercise the option given him by the lease of renewing it for a further term of four years. The renewal of the lease the court holds, in so far as the surety is concerned, is the making of a new lease.

### Death of Hon. Alexander J. Bentley.

The announcement of the death of Hon. Alexander J. Bentley, at his summer home in Haven, Me., on Saturday, July 25, 1908, was the occasion of genuine sorrow to a wide circle of friends in this District. Judge Bentley was a native of Ohio, but had resided in this District for nearly half a century. For more than forty years he had been connected with the Department of Justice, filling

with signal ability various responsible positions, including that of examiner of titles. He was one of the oldest members of the District bar, having been admitted to the bar of the old Circuit Court of the District of Columbia. While his duties in connection with the Department of Justice precluded him from engaging in active practice before our local courts, he had the cordial respect and regard of those who were privileged to know him. He is survived by one son, Mr. Alexander G. Bentley, of the bar of this District, who has the sincere sympathy of his fellow members in his bereavement.

### Liability of Employer for Negligence of Contractor.

In the recent case of *Philadelphia, Baltimore and Washington Railroad Company v. Mitchell*, decided by the Court of Appeals of Maryland, it appeared that while passing under a bridge being constructed by an employee of the appellant over one of the streets in the city of Havre de Grace, the appellee had her umbrella struck by a falling hammer, causing her to so twist and wrench her body that an aneurism resulted. In affirming a judgment for the plaintiff, the Court of Appeals held that the striking of the umbrella in the appellee's hands by the falling hammer was a physical impact, and that it was not necessary that she herself should have been struck. The court further held that the duty to refrain from interfering with the right of the public to the safe and unimpeded use of highways and streets is one of which an employer can not divest himself by committing the work to a contractor but that when the work is being done by an independent contractor the employer will not be liable for an injury caused by negligence in a matter collateral to the contract, though he will be if the injury be caused by the thing contracted to be done, or if it be such as might have been anticipated by him as a probable consequence of the work let out to the contractor and he takes no precautions to prevent it.

### The American Bar Association.

The thirty-first annual meeting of the American Bar Association will be held at Seattle, Wash., on August 25, 26, 27, and 28, 1908. In connection with the meeting will occur the sessions of the sections of Legal Education and Patent, Trade-Mark, and Copyright Law, together with the meetings of the Comparative Law Bureau and the Association of American Law Schools. The eighteenth conference of the Commissioners on Uniform State Laws will begin its sessions on Friday, August 21st, previous to the meeting of the association. The programme for the meetings will be found in another column of this issue. The annual address will be by Hon. George Turner, former United States Senator from the State of Wash- ington.

# Court of Appeals of the District of Columbia.

CHARLES BENDHEIM ET AL., APPELLANTS,

v.

THOMAS H. PICKFORD, APPELLEE.

## EQUITABLE LIEN; NOTICE; BURDEN OF PROOF.

1. The mere reference in a deed to the existence of a pending suit to which the grantor is a party is not sufficient to charge the grantee with notice of the existence of a contract for contingent attorney's fees for the prosecution thereof.
2. In a suit in equity to enforce against such grantee an equitable lien alleged to exist by reason of his having notice of such contract, where the agency for the grantee of a party through whom it was sought to charge him with notice was denied by the grantee and was proved only by the testimony of one of the complainants, the alleged agent not being called as a witness by either party, held that complainants failed to meet the burden resting on them to establish the existence of such agency, and the bill was properly dismissed.

No. 1884. Decided June, 1906.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 26,373, dismissing a bill to enforce an alleged equitable lien. Affirmed.

Mr. EDWIN FORREST for the appellants.

Mr. SAMUEL MADDOX and Mr. H. P. GATLEY for the appellee.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This is an appeal from a decree entered in the Supreme Court of the District of Columbia in a suit in equity filed by appellants, complainants below, to enforce an alleged equitable lien against certain property purchased by appellee, defendant below, from one Thomas Diggins.

The bill alleges that, in 1904, the appellants were members of the bar engaged in the practice of law in the District of Columbia; that, in May of that year, they were retained by Diggins to secure his interest in the estate of his uncle, Patrick Diggins, deceased; that they were to be paid a retaining fee of \$150 and 15 per cent of any and all recovery, either in money or property, they might secure for him; and that, by the terms of the contract, Diggins assigned to them 15 per cent of his interest in said recovery as security for the payment of their services. In pursuance of this alleged employment, appellants, on May 12, 1906, filed a bill for partition of said estate on behalf of their client, the same being No. 24,660 in equity.

It is also alleged that, during the pendency of the suit for partition, appellee purchased the interest of Thomas Diggins in the real estate belonging to the estate of Patrick Diggins, with notice of said fee agreement and assignment. Appellee, thereafter, filed a separate action for partition, No. 26,298 in equity. In the latter case, on June 8, 1906, a decree was made, ordering a sale of the property of the estate of Patrick Diggins, and appointing trustees to make the sale. On July 6, 1906, appellants filed their fee agreement and had the same recorded in the land records of the District of Columbia, and, thereafter, notified appellee and one John H. Walter, who is alleged to have been at that time the agent of appellee, of the existence of said agreement and of their alleged lien.

The petition then alleged that appellee took the

interest of Diggins in the property subject to the first partition proceedings and subject to appellants' lien, which they are entitled to have enforced against said property in the hands of appellee or against the fund derived from the sale thereof in the hands of the trustees. Appellants pray for the declaration and enforcement of said lien against said property or the proceeds of sale, and, in the event of sale, an application of sufficient of the proceeds thereof to satisfy their claim.

The following paragraphs of the answer raise the only question involved in the appeal:

"5. This defendant admits that on the 24th day of May, 1906, he filed the bill for partition referred to in said paragraph, the same being numbered Equity No. 26,298, wherein he alleged inter alia, that he had purchased of said Thomas Diggins his undivided one-third interest in the property in said bill described and praying for a partition thereof. He denies, however, that he had reasonable and due notice of the alleged agreement of said complainants, or any notice thereof whatever, before the acquisition of said one-third interest in said property.

"7. Answering the seventh paragraph of said bill this defendant says that he has no personal knowledge of the complainants recording their alleged agreement, or of the date of such recording, but if the same be material he calls for strict proof thereof. That he has no recollection of the said complainants thereafter notifying him of the existence of their alleged contract and agreement, though they may have done so. He has no knowledge of any such notice being given to John H. Walter, but says that even if such notice was given to said Walter it was no notice to him, this defendant; and he denies that said Walter was this defendant's agent."

The only question before us is one of fact: Did appellee have notice, either personal or by agent, of appellants' claim before he purchased Diggins' interest in his uncle's estate? If he did not, there is no theory upon which appellants can recover. The evidence of appellant Rothschild was offered on the part of appellants to show that prior to the date of the sale by Diggins to appellee, Diggins was negotiating for a loan on said property through the agency of Walter, and Rothschild was present with Walter and Diggins when these negotiations were being conducted, and that he then notified Walter of appellants' contract with Diggins and their alleged lien upon the property. Appellant Bendheim testified that the next day after appellee placed his deed for the property from Diggins of record, he telephoned appellee and asked him if he knew that they (appellants) had a contract with Thomas Diggins and a lien on the property he had purchased for services rendered and money advanced to Diggins, and that appellee replied that he knew nothing about it, and that he (Bendheim) would have to see Mr. Walter, his (appellee's) agent, about it. This conversation appellee denied. He also denied that Walter was his agent at the times mentioned. For some unaccountable reason, neither Diggins nor Walter were produced as witnesses by either side. It was sought by the above evidence to establish the agency of Walter and to show that knowledge of the existence of the appellants' claim had been brought home to appellee through the conversation with Walter. This brings us to the crucial point, the

agency of Walter. There was evidence by appellants to the effect that Walter visited their office shortly after the alleged conversation between Bendheim and appellee over the telephone, when he assured them that appellee would protect their claim. But this conversation, like the one when the loan to Diggins was under consideration, was not in the presence of appellee, and could not bind him unless the agency of Walter can be established. Again we are impressed with the importance of the evidence Walter could have given had he been produced as a witness. The direct evidence on the point as to Walter's agency is narrowed down to Bendheim and appellee. There is a direct conflict. The burden rested upon appellants. The court below held that they had failed to discharge that burden. With this conclusion we agree.

It is contended by counsel for appellants that notice of their claim was imputed to appellee by the terms of the deed from Thomas Diggins to appellee conveying the property in question. The deed contained the following clause: "All four said pieces and parcels of land and premises being also subject to such decree as may be rendered in equity causes Nos. 24,565 and 24,660, together with all and singular the improvements," etc. Appellee testified at the hearing that he had never seen the deed until it was produced in court; but that is immaterial, as he constructively accepted the deed, and he is chargeable with notice of its contents. If the recital in the deed was sufficient to give notice of the existence of appellants' claim, appellee would be chargeable with such notice at the time of the execution and acceptance of the deed. We do not think, however, that the mere reference to the existence of a pending suit is sufficient to charge notice of the existence of a contract for contingent attorney's fees for the prosecution thereof.

In the absence of notice to appellee prior to the purchase of the land from Diggins, the recording of the contract in the land records of the District of Columbia could in no way strengthen the present case. Notice of the existence of appellants' claim must have been brought home to appellee on or before his purchase of the land in question. Having failed to establish that such notice was given the whole case falls. The judgment is affirmed, with costs, and it is so ordered.

Affirmed.

Principal and Agent.—The right of a principal who has placed money in the hands of an agent for an illegal purpose to compel the agent to account to him for so much of it as has not been expended or appropriated to the unlawful purpose is sustained in *Ware v. Spinney* (Kan.), 91 Pac., 787, 13 L. R. A. (N. S.), 267.

A novel decision as to the authority of an agent authorized to sell land to a specified person sustains the sale, although the purchaser was not buying for himself, but as agent for an undisclosed principal. *Nicholson v. Dover* (N. C.), 58 S. E., 444, 13 L. R. A. (N. S.), 167.

A peculiar case of the attempt of an undisclosed principal to enforce a contract for the sale of land, made by his duly authorized agent, holds that this can not be done where the contract contains a personal covenant on the part of the agent to warrant the title. *Birmingham Matinee Club v. McCarty* (Ala.), 44 So., 642, 13 L. R. A. (N. S.), 156.

**Acts Relating to the District of Columbia, Passed at the 1st Session, 60th Congress.**

[PUBLIC—No. 73.]

An Act To amend an Act entitled "An Act authorizing the extension of Meridian place northwest," approved January ninth, nineteen hundred and seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act authorizing the extension of Meridian place northwest," approved January ninth, nineteen hundred and seven, be, and the same is hereby, amended by adding after the words "fifty feet," at the end of section one thereof, the words "along such line as said Commissioners shall deem most advantageous."

Approved, March 27, 1908.

[PUBLIC—No. 83.]

An Act Prescribing what shall constitute a legal cord of wood in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter a legal cord of wood in the District of Columbia shall consist of and contain one hundred and twenty-eight cubic feet.

Sec. 2. That all acts or parts of acts in conflict with or inconsistent with this act are hereby repealed in so far and only in so far as they conflict or are inconsistent herewith.

Approved, April 2, 1908.

[PUBLIC—No. 99.]

An Act To regulate the establishment and maintenance of private hospitals and asylums in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall in the District of Columbia establish or maintain any private hospital or asylum, either for the reception of human beings or of domestic animals, unless or until licensed by the Commissioners of said District.

Sec. 2. That it shall be the duty of the health officer of the District of Columbia, and of such agents and employees in the service of the health department of said District as he may designate for that purpose, to enforce the provisions of this act and of all regulations made by authority thereof; and said health officer and agents and employees are hereby authorized, in the performance of the duty aforesaid, to enter and inspect during all reasonable hours all private hospitals and asylums in said District. No person shall interfere with said health officer, or with any agent or employee aforesaid, in the performance of his official duty, nor hinder, prevent, or refuse to permit any inspection authorized by this act.

Sec. 3. That any person who, for himself or as the employee or agent of another person, or as a member, officer, or employee of a firm or corporation, violates any of the provisions of this act or any regulations made hereunder by the Commissioners of the District of Columbia, or aids in the violation thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment, in the discretion of the court.

Sec. 4. That the Commissioners of the District of



Columbia be, and they are hereby, authorized and empowered to promulgate from time to time such regulations as in their judgment public interests require to govern the establishment and maintenance of private hospitals and asylums, whether for human beings or for domestic animals, and to regulate the issue, suspension, and revocation of licenses aforesaid.

Sec. 5. That all prosecutions under this act shall be in the Police Court of the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants.

Sec. 6. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, April 20, 1908.

[PUBLIC—No. 114.]

An Act To provide for registration of all cases of tuberculosis in the District of Columbia, for free examination of sputum in suspected cases, and for preventing the spread of tuberculosis in said District.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of every physician in the District of Columbia to report in writing to the health officer of said District, within one week after the disease is recognized, on forms to be provided by said health officer, the name, age, sex, color, occupation, and address of every person under his care in said District, who, in his opinion, is afflicted with pulmonary or other communicable form of tuberculosis. It shall also be the duty of the officer having charge for the time being of each and every hospital, dispensary, asylum, or other similar public or private institution in said District to report in like manner the name, age, sex, color, occupation, and last address of every person who is in his care or who has come under his observation within one week of such time who, in his opinion, is afflicted with pulmonary or other communicable form of tuberculosis.

Sec. 2. That the health officer of said District shall promptly make, or cause to be made by a competent microscopist, a microscopical examination of the sputum of persons thus reported, and shall make a report thereof, free of charge, to the physician or officer upon whose application the examination was made. If the examination fails to show the existence of the disease that fact shall be recorded.

Sec. 3. That the health officer of said District shall cause all cases showing the presence of tubercle bacilli to be recorded in a register of which he shall be the custodian, which register shall not be open to inspection by anyone except the health officer and the deputy health officer of said District, and neither said health officer nor said deputy health officer shall permit any such record to be divulged in such manner as to disclose the identity of the person to whom it relates except as it may be necessary in carrying out the provisions of this act.

Sec. 4. That it shall be the duty of the health department, in every case where a microscopical examination reveals the existence of tuberculosis, to supply to such person, or those in charge of such person, unless otherwise requested by the attending physician, printed instructions as to the methods to be employed to prevent the spread of the disease.

Sec. 5. That in case of death from pulmonary or other communicable form of tuberculosis, or the removal from any apartment or premises of a person or persons so afflicted, it shall be the duty of the attending physician, if he has such knowledge, or, if there be no such physician or if such physician be absent, of the occupant or other person in charge of said apartment or premises to notify the health officer, in writing, of such death or removal, within twenty-four hours thereafter, and such apartment or premises shall then be disinfected by the health department at public expense or, if the owner prefers, by the owner to the satisfaction of the health department, and shall not again be occupied until so disinfected.

Sec. 6. That it shall be the duty of every person afflicted with tuberculosis, and of every person in attendance upon anyone afflicted therewith, and of the authorities of public and private institutions or dispensaries in said District to observe and enforce all sanitary rules and regulations of the Commissioners of the District of Columbia for preventing the spread of the disease.

Sec. 7. That upon the recovery of any person who has been found to be suffering from tuberculosis a report to that effect to the health department, made by the attending physician, shall be recorded in the register aforesaid, and shall relieve said person from further liability to any requirements imposed by this act.

Sec. 8. That any person violating any of the provisions of this act, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding twenty-five dollars.

Sec. 9. That all prosecutions under this act shall be in the Police Court of said District upon information brought in the name of the District of Columbia and on its behalf.

Sec. 10. That all acts and parts of acts contrary to or inconsistent with the provisions of this act be, and they are hereby, repealed.

Approved, May 13, 1908.

[PUBLIC—No. 119.]

An Act For the widening of Benning road, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under and in accordance with the provisions of subchapter one of chapter fifteen of the Code of Law for the District of Columbia, within ninety days after the dedication to the District of Columbia of fifty per centum of the land necessary for the widening of Benning road in the District of Columbia from Fifteenth street northeast to Oklahoma avenue, exclusive of the strip of land thirty feet in width acquired by the Columbia Railway Company under the provisions of the act of Congress approved June thirteenth, eighteen hundred and ninety-eight, entitled "An act to authorize the extension eastwardly of the Columbia Railway," according to the street extension plans of said District, the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to institute in the Supreme Court of the District of Columbia a proceeding in rem to condemn the land that may be necessary to complete the widening of said road to a width of one hundred and ten feet between the limits named: Provided, however, That the entire amount found to be due and awarded by the jury in said

proceeding as damages, for and in respect of the land to be condemned for said extension plus the costs and expenses of said proceeding, shall be assessed by the jury as benefits: And provided further, That nothing in said subchapter one of chapter fifteen of said Code shall be construed to authorize the jury to assess less than the aggregate amount of the damages awarded for and in respect of the land to be condemned and the costs and expenses of the proceeding hereunder: And provided further, That the said Columbia Railway Company, its successors or assigns, shall remove its tracks to the center of the street when widened when required so to do by the Commissioners of the District of Columbia.

Sec. 2. That there is hereby appropriated from the revenues of the District of Columbia an amount sufficient to pay the necessary costs and expenses of the condemnation proceedings taken pursuant hereto and for the payment of amounts awarded as damages; to be repaid to the District of Columbia from the assessments for benefits and covered into the Treasury to the credit of the revenues of the District of Columbia.

Sec. 3. That section eight hundred and sixty-nine of an act of Congress entitled "An act to establish a Code of Law for the District of Columbia," approved March third, nineteen hundred and one, be, and the same is hereby, amended so as to read as follows:

"It shall be unlawful for any person or association of persons, to bet, gamble, or make books or pools on the result of any trotting or running race of horses, or boat race, or race of any kind, or on any election, or any contest of any kind, or game of baseball. Any person or association of persons violating the provisions of this section shall be fined not exceeding five hundred dollars or be imprisoned not more than ninety days, or both."

Approved, May 16, 1908.

[PUBLIC—No. 149.]

An Act To regulate the employment of child labor in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no child under fourteen years of age shall be employed or permitted to work in the District of Columbia in any factory, workshop, mercantile establishment, store, business office, telegraph or telephone office, restaurant, hotel, apartment house, club, theater, bowling alley, laundry, boothblack stand, or in the distribution or transmission of merchandise or messages. No such child shall be employed in any work performed for wages or other compensation, to whomsoever payable, during the hours when the public schools of the District of Columbia are in session, nor before the hour of six o'clock in the morning or after the hour of seven o'clock in the evening: Provided, That the provisions of this section shall not apply to children employed in the service of the Senate: And provided further, That the judge of the Juvenile Court of said District may, upon the application of the parent, guardian, or next friend of said child, issue a permit for the employment of any child between the ages of twelve and fourteen years at any occupation or employment not in his judgment dangerous or injurious to the health or morals of such child, upon evidence satisfactory to him that the labor of such child is necessary for its support, or

for the assistance of a disabled, ill, or invalid father or mother, or for the support in whole or in part of a younger brother or sister or a widowed mother. Such permits shall be issued for a definite time, but they shall be revocable at the discretion of the judge by whom they are issued or by his successor in office. Hearings for granting and revoking permits shall be held upon such notice and under such rules and regulations as the judge of said court shall prescribe.

Sec. 2. That no child under sixteen years of age shall be employed or permitted to work in the District of Columbia in any of the establishments named in section one, unless the person or corporation employing him procures and keeps on file and accessible to the inspectors authorized by this act and the truant officers of the District of Columbia an age and schooling certificate, and keeps two complete lists of all such children employed therein, one on file and one conspicuously posted near the principal entrance of the building in which such children are employed.

Sec. 3. That an age and schooling certificate shall be approved only by the superintendent of public schools, or by a person authorized by him in writing, who shall have authority to administer the oath provided for therein, but no fee shall be charged therefor.

Sec. 4. That no age and schooling certificate shall be approved unless satisfactory evidence is furnished by duly attested transcript of the certificate of birth or baptism of such child, or other religious record, or the register of birth or the affidavit of the parent or guardian or custodian of a child, which affidavit shall be required, however, only in case such last-mentioned transcript of the certificate of birth be not procured and filed, showing the place and date of birth of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath, and who shall not demand or receive a fee therefor.

Sec. 5. That the age and schooling certificate of a child under sixteen years of age shall be in the following form:

AGE AND SCHOOLING CERTIFICATE.

This certifies that I am the (father, mother, guardian, or custodian) of (name of child) —, and that (he or she) was born at (name of town or city) — in the county (name of county, if known) — and State (or country) — on the (day and year of birth) — and is now (number of years and months) — old.

Signature of (father, mother, guardian, or custodian).

(Date.)

There personally appeared before me the above-named (name of person signing) — and made oath that the foregoing certificate by (him or her) signed is true to the best of (his or her) knowledge and belief. I hereby approve the foregoing certificate of (name of child) —; complexion (fair or dark) —; hair (color), — having no sufficient reason to doubt that (he or she) is of the age therein certified, I hereby certify that (he or she) can read at sight and can write legibly simple sentences in the English language, and that (he or she) has reached the normal development of a child of (his or her) age, and is in sound health and is physically able to

perform the work which (he or she) intends to do, and that (he or she) has regularly attended the public schools, or a school equivalent thereto, for not less than one hundred and thirty days during the school year previous to applying for such school record, or during the year previous to applying for such school record, and has received during such period instruction in reading, spelling, writing, and arithmetic.

This certificate belongs to (name of child in whose behalf it is drawn) ——— and is to be surrendered to (him or her) whenever (he or she) leaves the service of the corporation or employer holding the same, but if not claimed by said child within thirty days from such time it shall be returned to the superintendent of schools.

(Signature of person authorized to approve and sign, with official character of authority.)

(Date.)

A duplicate of each age and schooling certificate shall be filled out and kept on file by the superintendent of public schools. Any explanatory matter may be printed with such certificate, in the discretion of said superintendent: Provided, That in exceptional cases the judge of the Juvenile Court, upon the recommendation of the superintendent of public schools, or the person authorized to act for him, may, in writing, waive the necessity of the schooling certificate provided for in this act, and in such cases the age certificate shall entitle the holder to be employed without a violation of this act.

Sec. 6. That whoever employs a child or permits a child to be employed in violation of sections one, two, eight, or nine of this act shall be deemed guilty of a misdemeanor and, for such offense, be fined not more than fifty dollars; and whoever continues to employ any child in violation of any of said sections of this act, after being notified by an inspector authorized by this act, or a truant officer of the District of Columbia, shall for every day thereafter that such employment continues be fined not more than twenty dollars. A failure to produce to an inspector authorized by this act, or a truant officer of the District of Columbia, any age or schooling certificate or list required by this act shall be prima facie evidence of illegal employment of any person whose age and schooling certificate is not produced or whose name is not listed. Any corporation or employer retaining any age and schooling certificate in violation of section five of this act shall be fined not more than twenty dollars. Every person authorized to sign the certificate prescribed by section five of this act who knowingly certifies to any materially false statement therein shall be fined not more than fifty dollars.

Sec. 7. That the inspectors authorized by this act and the truant officers of the District of Columbia shall visit the establishments named in section one and ascertain whether any minors are employed therein contrary to the provisions of this act, and they shall report any cases of such illegal employment to the superintendent of public schools and the corporation counsel of the District of Columbia. The inspectors authorized by this act and the truant officers of the District of Columbia shall require that the age and schooling certificates and lists provided for in this act of minors employed in the establishments named in section one shall be produced for their inspection.

Sec. 8. That no minor under sixteen years of

age shall be employed, permitted, or suffered to work in any of the establishments named in section one more than eight hours in any one day, or before the hour of six o'clock antemeridian, or after the hour of seven o'clock post meridian, and in no case shall the number of hours exceed forty-eight in a week.

Sec. 9. That every employer shall post in a conspicuous place in every room where such persons are employed a printed notice, stating the number of hours required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time or times allowed for dinner or for other meals begin and end. The printed form of such notice shall be furnished by the inspectors authorized by this act and the truant officers of the District of Columbia, and the employment of any such person for a longer time in any day than that so stated shall be deemed a violation of this section.

Sec. 10. That the Commissioners of the District of Columbia are hereby authorized to appoint two inspectors to carry out the purposes of this act, at a compensation not exceeding one thousand two hundred dollars each per annum.

Sec. 11. That no male child under ten, and no girl under sixteen years of age shall exercise the trade of bootblacking, or sell or expose or offer for sale any newspapers, magazines, periodicals, or goods, wares, or merchandise of any description whatsoever, upon the streets, roads, or highways, or in any public place within the District of Columbia.

Sec. 12. That from and after July first, nineteen hundred and eight, no male child under sixteen years shall exercise the trade of bootblacking or sell or expose or offer for sale any newspapers, magazines, periodicals or goods, ware or merchandise of any description whatsoever upon the streets, roads, or highways, or in any public place within the District of Columbia unless a permit and badge as hereinafter provided shall have been issued to him by the superintendent of public schools of the District of Columbia, or by a person authorized by him in writing for that purpose upon the application of the parent, guardian, or other person having the custody of the child desiring such a permit and badge, or in case said child has no parent, guardian, or custodian, then on the application of his next friend, being an adult.

Sec. 13. That such permit and badge shall be issued free of charge to the applicant, but shall not be issued until an age and schooling certificate shall have been issued as provided in this act.

Sec. 14. Such permit shall state the date and place of birth of the child, the name and address of its parent, guardian, custodian, or next friend, as the case may be, and describe the color of hair and eyes, the height and weight, and any distinguishing facial mark of such child, and shall further state that the age and schooling certificate has been duly examined and filed, and that the child named in such permit has appeared before the officer issuing the permit. The badge furnished by the officer issuing the permit shall bear on its face a number corresponding to the number of the permit and the name of the child. Every such permit, and every such badge, on its reverse side, shall be signed in the presence of the officer issuing the same by the child in whose name it is issued. The badge provided for herein shall be

worn conspicuously at all times by such child while so working, and all such permits and badges shall expire annually on the first day of January. The color of the badge shall be changed each year. No child to whom such permit and badge are issued shall transfer the same to any other person, nor be engaged in the District of Columbia in any of the trades or occupations mentioned in this section without having conspicuously upon his person such badge, and he shall exhibit the same upon demand to any police or truant officer or to the inspectors in this act provided for.

Sec. 15. That no child to whom a permit and badge are issued as provided for in the preceding sections shall sell or expose or offer for sale any newspapers, magazines, or periodicals or goods, wares, or merchandise of any description whatever after ten o'clock in the evening or before six o'clock in the morning.

Sec. 16. That nothing in this act contained shall apply to the employment of any child in a theatrical exhibition, provided the written consent of one of the Commissioners of the District of Columbia is first obtained. Such consent shall specify the name of the child, its age, the names and residence of its parents or guardians, together with the place and character of the exhibition.

Sec. 17. That the Juvenile Court of the District of Columbia is hereby given jurisdiction in all cases arising under this act.

Approved, May 28, 1908.

**Jurisdiction of Bankruptcy Court to Ascertain Whether Basis for Adverse Claim Exists.**—In *Matter of Friedman*, 20 Am. B. R., 37, it is held that where property, alleged to be part of the bankrupt's estate, is found in the possession of third parties who assert right to possession by reason of a claim adverse to the bankrupt, the bankruptcy court has power to ascertain whether any basis for such claim actually existed at the time of the filing of the petition. The court is bound to enter upon that inquiry, and, in doing so, acts within its jurisdiction, while its conclusion may be that an adverse claim, not merely colorable, but real, even though fraudulent and voidable, exists in fact, so that it must decline to finally adjudicate on the merits. If it errs in its ruling either way, its action is subject to review.

**Bankruptcy Debts — Priority — Commissions of Traveling Salesman Constitute "Wages."**—In *re New England Thread Co.*, 20 Am. B. R., 47, holds that where the services and responsibility of a salesman employed by a bankrupt are substantially limited to the obtaining of orders in a certain territory and having them sent to his employer, he is a "traveling or city salesman" within section 64b (4) of the bankruptcy act as amended, and that he had an office in a city within his territory and paid the expenses incident thereto, that all orders were first sent there, and that in the trade circular sent out by the employer, the salesman was called its specially authorized representative in the United States, in no material way changes the real character of his employment, and his commissions on sales constitute "wages" within said section, and a claim therefor to the extent of \$300 is entitled to priority of payment where earned within the three months period.

#### The American Bar Association.

The thirty-first annual meeting of the association will be held at Seattle, Wash., on Tuesday, Wednesday, Thursday, and Friday, August 25, 26, 27, and 28, 1908. The sessions of the association will be at 10 o'clock a. m. and 8 o'clock p. m. on Tuesday, Wednesday, and Thursday, and at 10 o'clock a. m. on Friday.

The sessions of the section of legal education will be on Wednesday and Thursday afternoons, August 26th and 27th, at 3 o'clock p. m.

The sessions of the section of patent, trade-mark, and copyright law will be on Tuesday and Wednesday, August 25th and 26th, at 3 o'clock p. m.

On Monday, August 24th, at 3 o'clock p. m., there will be a meeting of the Comparative Law Bureau.

On Tuesday, August 25th, at 3 o'clock p. m., and on such other dates as may be determined upon at Seattle, there will be meetings of the Association of American Law Schools.

The eighteenth conference of Commissioners on Uniform State Laws will begin its sessions on Friday, August 21st, at 10 o'clock a. m., being Friday of the week previous to the meeting of the American Bar Association.

The place of holding the various meetings will be announced at Seattle. The reception room will be at the New Washington Hotel.

#### PROGRAMME OF THE ASSOCIATION.

##### TUESDAY MORNING, 10 O'CLOCK.

The president's address, by J. M. Dickinson, of Illinois, communicating the most noteworthy changes in Statute Law on points of general interest, made in the several States and by Congress during the preceding year.

Nomination and election of members; election of the general council; report of the secretary; report of the treasurer; report of the executive committee.

##### TUESDAY EVENING, 8 O'CLOCK.

A paper by C. H. Hanford, United States District Judge for the District of Washington, on "National Progression; and the Increasing Responsibilities of our National Judiciary."

A paper by Edgar H. Farrar, of Louisiana, on "The Extension of Admiralty Jurisdiction by Judicial Interpretation."

Discussion upon the subjects of the papers read.

##### WEDNESDAY MORNING, 10 O'CLOCK.

The annual address by George Turner, ex-United States Senator from the State of Washington.

Reports of standing committees (see report of 1907, page 877, giving a memorandum of subjects referred):

On jurisprudence and law reform; on judicial administration and remedial procedure; on legal education and admissions to the bar; on commercial law; on international law; on grievances; on obituaries; on law reporting and digesting; on patent, trade-mark, and copyright law; on insurance law; on taxation; on uniform State laws; report of Comparative Law Bureau.

##### WEDNESDAY EVENING, 8 O'CLOCK.

A paper by Frederick Bausman, of Washington, on "Whether Our Laws are Responsible for the Increase of Violent Crime."

Discussion upon the subject of the paper read.  
Unfinished standing committee reports.

**THURSDAY MORNING, 10 O'CLOCK.**

Unfinished standing committee reports.

Reports of special committees (see report of 1907, page 878):

On classification of the law; on Indian legislation; on penal laws and prison discipline; on Federal courts; on title to real estate; on code of professional ethics; on proposed copyright bill; on proposed lawyers' home; to suggest remedies and formulate proposed laws to prevent delay and unnecessary cost in litigation.

**THURSDAY EVENING, 8 O'CLOCK.**

Unfinished Special Committee reports.

**FRIDAY MORNING, 10 O'CLOCK.**

Nomination of officers; unfinished business; miscellaneous business; election of officers.

The annual dinner will be given by the association at 8 o'clock on Friday evening. A charge of \$5 for dinner tickets will be made to each member and delegate.

A room in the New Washington Hotel will be open as a reception room for the use of members of the association and delegates during the meeting.

Members and delegates are particularly requested to register their names as soon as convenient after their arrival in the register of the association, which will be kept in the reception room in the New Washington Hotel in order that the list of those present may be complete. During the sessions of the association the register will be kept at the place of meeting.

The members of the general council will meet in the reception room in the New Washington Hotel, on Monday evening, August 24th, at 9.30 o'clock.

The attention of the various standing committees is called to the provision of the by-laws by which such committees are required to meet every year, at such hour as their respective chairmen may appoint, on the day preceding the annual meeting, at the place where the same is to be held. All such committees will also meet in the reception hall in the New Washington Hotel on Monday, evening, August 24th, at 9.30 o'clock.

The attention of committees is called to the following provision of the by-laws:

All committees may have their reports printed by the secretary before the annual meeting of the association; and any such report, containing any recommendation for action on the part of the association, shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. Such report shall be distributed by mail by the secretary to all the members of the association at least fifteen days before the annual meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved unless there has been a report of a committee, either in favor of or against the same, and unless such legislation be approved by a two-thirds vote of the members of the association present.

It is desirable that all nominations of new members, as far as possible, should be submitted to the general council at its first session on Monday evening. The mode of nomination will be found below, and forms will be furnished by the secre-

tary, if desired. Any nomination put in proper form and sent to the secretary before the meeting will be submitted to the general council at its first session.

The executive committee will act on any nominations for elections made under the last clause of Article IV, if sent to the secretary prior to August 1st. Forms will be furnished on application.

**CONSTITUTION.**

"IV. All nominations for membership shall be made by the local council of the State to the bar of which the persons nominated belong. Such nominations must be transmitted in writing to the chairman of the general council, and approved by the council, on vote by ballot.

"The general council may also nominate members from States having no local council, and at the annual meeting of the association, in the absence of all members of the local council of any State: Provided, That no nominations shall be considered by the general council, unless accompanied by a statement in writing by at least three members of the association from the same State with the person nominated, or, in their absence, by members from a neighboring State or States, to the effect that the person nominated has the qualifications required by the constitution and desires to become a member of the association, and recommending his admission as a member.

"During the period between the annual meetings, members may be elected by the executive committee upon the written nomination of a majority of the vice-president and members of the local council of any State."

**BY-LAWS.**

"IV. Each State bar association may annually appoint delegates, not exceeding three in number, to the next meeting of the association. In States where no State bar association exists, any city or county bar association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting."

**ENTERTAINMENT.**

At the conclusion of the meetings a two-days' trip will be given to the members and delegates around Puget Sound, the Bay of Georgia and the Straits of Juan de Fuca, stopping at Vancouver, Victoria, Port Angeles, Port Townsend and Tacoma.

**PROGRAMME OF THE SECTION OF PATENT, TRADE-MARK AND COPYRIGHT LAW.**

The sessions will be held on Tuesday and Wednesday afternoons, August 25th and 26th at 8 o'clock.

Address of the chairman, Robert S. Taylor, of Fort Wayne, Indiana.

A paper will be read by Wallace R. Lane, of Des Moines, Iowa, on "Certain Phases of a Patentee's Prima Facie Rights. I. On Demurrer for want of Patentability. II. As to Circularizing in Patent Litigation."

Papers will also be read by J. Nota McGill, of Washington, District of Columbia, and Douglas Dyrenforth, of Chicago, Illinois.

A discussion on the papers will follow.

OTTO R. BARNETT, Secretary,  
1515 Monadnock Building, Chicago, Ill.

# PROGRAMME OF THE SECTION OF LEGAL EDUCATION.

The sessions will be held on Wednesday and Thursday afternoons, August 26th and 27th, at 3 o'clock.

## WEDNESDAY AFTERNOON.

Address by the chairman of the section, Samuel Williston, professor of law, Harvard Law School, on "The Necessity of Idealism in Teaching Law."

A paper by William Schofield, justice of the Superior Court of Massachusetts, on "The Relation of the Law Schools to the Courts."

Discussion upon the subjects of the papers read.

## THURSDAY AFTERNOON.

A paper by Karl von Lewinski, Amstrichter, Berlin, on "The Education of a German Lawyer."

A paper by Andrew A. Bruce, Dean of the College of Law, University of North Dakota, and chairman of the North Dakota Board of Bar Examiners on "The Relation of State Bar Examiners to the Law School and the Cause of Legal Education."

Discussion upon the subjects of the papers read.

CHARLES M. HEPBURN, Secretary,  
Indiana University School of Law,  
Bloomington, Ind.

# PROGRAMME OF THE COMPARATIVE LAW BUREAU.

The first annual meeting will be held at the New Washington Hotel, Seattle, Washington, on Monday, August 24th, at 2.30 o'clock p. m.

Annual address of the director, Simeon E. Baldwin, of New Haven, Connecticut.

Reading of report to American Bar Association.  
Germane topical discussions.

Membership and participation at the meeting are classified as follows:

Class A. All members of the American Bar Association. Class B. State bar associations, by three delegates each. Class C. Members of the Association of American Law Schools, by two delegates each. Class D. Law schools and law libraries, by two delegates each. Class E. Institutions of learning, city and county bar associations, by two delegates each. Class F. Individual lawyers who are not members of the American Bar Association, by personal attendance.

SIMEON E. BALDWIN, Director,  
New Haven, Conn.  
WILLIAM W. SMITHERS, Secretary,  
1100 Land Title Bldg., Philadelphia, Pa.

# PROGRAMME OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS.

The ninth annual meeting will be held at the New Washington Hotel, Seattle, Wash., on Tuesday, August 25, 1908, and on such other dates as may be there determined upon.

Annual address of the president of the Association of American Law Schools, by George W. Kirchwey, Dean of the Columbia University Law School.

A paper by Dr. David Starr Jordan, President of the Leland Stanford, Jr., University, on "The Relation of the Law School to the University."

Discussion upon the subjects of the papers read.  
Business meeting of the association.

# CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

The eighteenth conference will be held at the New Washington Hotel, Seattle, Wash., beginning August 21, 1908, at 10 o'clock a. m.

All members of the American Bar Association, and particularly the members of the committee on uniform State laws of the American Bar Association, as well as the representatives of commercial or other bodies interested in uniform laws relating to bills of lading, stock certificates, partnership, or any other uniform laws which may be the subject of consideration by the conference, are cordially invited to attend and to take part in the preparation, examination, and discussion of bills relating to those matters.

AMASA M. EATON, President,  
Providence, R. I.  
CHARLES THADDEUS TERRY, Secretary,  
100 Broadway, New York, N. Y.

# A Fine Point in the Negotiable Instruments Law.

[Case and Comment.]

A recent Iowa case, and two recent English decisions, have reached different results on a question of no small importance under the uniform negotiable instruments law. The decision of the Iowa court in *Vander Ploeg v. Van Zuuk* (Iowa), 13 L. R. A. (N. S.), 490, 112 N. W., 807, holds that an innocent payee who takes a promissory note in which a blank has been wrongfully filled by an agent of the maker can not be protected, under the uniform negotiable instruments law, as a "holder in due course," to whom the instrument is negotiated after completion—at least if the payee takes the note for a past indebtedness. The provision just quoted is a modification of the preceding provisions, which gives to the person in possession prima facie authority to fill up blanks, declaring, however, that, in order "that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given, and within a reasonable time." It seems clear, therefore, that the terms of this statute give to a payee no protection as against the wrongful act of the maker's agent in filling up blanks, unless he is within the terms of the exception as a holder in due course, to whom the instrument is negotiated after completion. This the Iowa court holds he is not, and such conclusion is in accordance with the general understanding of the meaning of the language. Men do not ordinarily speak of the delivery of a note to a payee as a negotiation of it, and the accompanying words which describe the transaction as a negotiation of the instrument after completion, to a holder in due course, seem to accentuate the distinction between an original party to the instrument and one to whom it is subsequently transferred. This Iowa decision is supported by the English case of *Herdman v. Wheeler* (1902), 1 K. B., 361, which is to the same effect, under the English negotiable instruments law, the material provisions of which are practically identical with those of the uniform negotiable instruments law now adopted in many States of the Union. But a later English decision of the Court of Appeal, in *Lloyd's Bank v. Cooke* (1907), 1 K. B., 794, distinguishes and well-nigh supersedes



the Herdman case, by holding that, while the negotiable instruments law may not give the payee in such a case any protection against the wrongful act of the maker's agent in filling the blank, he may still invoke the common law doctrine of estoppel. This doctrine was not discussed in the Iowa case, or in the Herdman case, in each of which it seems to have been assumed that the rights of the parties must be determined exclusively by the negotiable instruments law. Those decisions probably settle the construction of the statutory provisions; but they leave open the question of the effect of the statute to destroy the right which payees had previously enjoyed to invoke the doctrine of estoppel. The authorities are practically unanimous in favor of the right of the payee in such a case, unless it is taken away by statute.

A material change in the law, seriously increasing the risks of payees, would result, if it should be established that, under the negotiable instruments law, the doctrine of estoppel can no longer be invoked against a maker whose agent has wrongfully exercised his authority to fill blanks. In that case the payee of a negotiable instrument is allowed less protection than the payee or obligee of a non-negotiable instrument. That a misuse of authority to fill blanks, even in the case of a deed, is subject to the doctrine of estoppel, is illustrated in the case of *McCleery v. Wakefield*, 76 Iowa, 529, 2 L. R. A., 529, 41 N. W., 210. The improbability that the legislature would intend this result is to be considered in construing the law. The statute expressly provides that "in any case not provided for in this act the rules of the law merchants shall govern." This recognizes the act as a codification of the laws on that subject, superseding the law merchant so far as they conflict. The doctrine of estoppel, as applied to non-negotiable instruments and contracts generally, is obviously unaffected by the statute. It may be argued, therefore, that the provisions in the negotiable instruments law with respect to filling blanks were intended to define the extent and limits of that right in case of negotiable paper only, and particularly with respect to the effect of the negotiable character of the instrument as distinguished from other contracts; and that there was no intention to give the payee of a negotiable instrument less protection against the wrongful acts of the maker's agent than would be given him if the instrument had no element of negotiability in it. As between the maker and the payee of an instrument, it may be urged that its negotiable form is of no importance, and that their rights depend upon common-law rules governing contracts, and not upon the law merchant. If so, those rules would not be impliedly superseded by the statute. In expressly saving the rules of the law merchant in cases not provided for in the act, the American statute does not, like the English act, mention common-law rules, but this seems immaterial for the reason that neither statute was intended to codify rules of the common-law beyond the scope of the law merchant. In the *Lloyd's Bank* case the English court expressly declared that the negotiability of the document constituted no reason why the doctrine of estoppel should not apply, but rather the contrary, as that fact more clearly indicated an intention that the agent should use the instrument as a means of raising money. It seems highly improbable that the in-

tent of the statute was to create this unfavorable discrimination against the payee of a negotiable instrument when compared with the obligee of a nonnegotiable contract. In the light of the latest English case applying the doctrine of estoppel, which was not considered in the Iowa case, it may be proper to conclude that this phase of the subject still presents an open question for the courts of this country.

#### Expert Evidence as to Typewriting.

[Case and Comment.]

It has often been said that forgery is easy now that important documents are usually typewritten. Most people have supposed that the work of typewriters was so uniform that the substitution of one sheet for another could be made almost as a matter of course, with impunity. Comparatively few lawyers are yet aware that, so far from this being true, the detection of forgery in a typewritten instrument is in most cases a matter of well-nigh mathematical demonstration. Doubtless, many forgeries of this kind have been successful, though suspected, because of the erroneous belief that proof of the forgery was impossible. There is a fascinating interest in studying the evidences of forgery in such cases because of the peculiar satisfaction in reaching in most cases a conclusion that is unmistakably true. It is true that detection of a typewritten forgery may be difficult, even impossible, if both the genuine and the spurious pages were written on the same machine and at very nearly the same date. Possibly this will be so if they are written on two machines of the same make, both of which are new. But different machines, even of the same make, will almost certainly have some minute distinguishing differences, and these will be rapidly exaggerated by use. The least slant of a letter, the slightest defect or peculiarity of any kind in it, may distinguish even a new machine from others, and, when used, some characteristics of this kind are certain to appear and increase with time. In case any of these peculiarities of a machine exist, its identification becomes a matter of certainty if a reasonable quantity of its work can be obtained for examination. A broken, bruised, or scarred letter, or one out of line, may positively identify the work of that machine during the period when such defect existed. And, if in a letter book or otherwise continuous samples of the work of the machine are available for inspection, it can be positively determined at what date this peculiarity of the machine first developed. Various defects of this sort appearing successive during a course of years make it possible to fix positively the time when any particular specimen of work done on that machine was made. In these and similar ways a competent expert can often prove to a demonstration that a forged document, or portion of a document, could not possibly have been made when and by the machine that made the genuine document. Perhaps no one has done so much to discover the possibilities of these proofs of forgery in typewriting as Albert S. Osborn, of Rochester, New York, who has written articles during several years past in various journals showing by explanation and illustrations the certainties of proof in this class of cases. But the field is a large one, and there are

already many experts able to detect and prove the existence of such forgeries. Yet, it is unfortunately still true that many attorneys are unaware of the extent to which this line of evidence has been developed, and, as a result, in some cases they permit typewritten forgeries to go unchallenged when they ought to be detected and proved spurious.

#### Evidence; Telephonic Communications.

In *Conkling v. Standard Oil Co.* in the Supreme Court of Iowa, June, 1908, 116 N. W., 822, it was held that a telephone conversation may be repeated in evidence where such conversation is otherwise admissible, though the witness did not identify positively the person with whom he had the conversation, that matter only going to the weight of the evidence. On this point the court said:

"Was there competent evidence on the subject of express warranty sufficient to take the case to the jury? Plaintiff called as a witness one Campbell, an automobile salesman, and, over the objection of defendant, he was allowed to testify that on a day previous to the transaction in question, at the request of and in the presence of plaintiff, he called up the office of defendant by telephone, when a conversation occurred, as follows: 'Q. Are you selling Polar Ice Oil for cooling purposes in automobiles? A. Yes. Q. Do you recommend it? A. Yes. Q. Is it being used to any extent? A. Yes. Q. Is there any danger from fire? A. No.' To other questions the witness answered that he did not know who was talking at the other end of the line, but that he had frequently telephoned orders to the office of defendant; and, referring to the person who answered at the time in question: 'I would say it was the same person.' The objection made to this testimony was that any statement made to Campbell was incompetent and immaterial under the issues; that it did not appear with whom the conversation was had, nor that such person was an employee of defendant authorized to make representations. And for these reasons counsel insist that the evidence was improperly admitted into the record, and should not, therefore, be considered in determining whether or not a case had been made for the jury. We are not disposed to concede merit in the objection. The fact that the conversation was carried on by Campbell is not material. To all intents and purposes plaintiff was talking through Campbell, 30 Am. & Eng. Ency., p. 150. As the case stood at the time the evidence was offered, plaintiff was claiming that defendant was holding out the particular brand of oils as suitable and safe for cooling purposes, and clearly enough the evidence was addressed to proof thereof. Nor is the fact that the witness could not positively identify the person with whom he was talking necessarily fatal to the admissibility of the evidence. It is well settled that, where otherwise admissible, telephone conversations may be repeated in evidence. 'Conversations so held are as admissible in evidence as personal interviews by a customer with an unknown clerk in charge of an ordinary shop would be in relation to the business there carried on.' *Wolfe v. Railway*, 97 Mo., 473, 11 S. W., 49, 3 L. R. A., 539, 10 Am. St. Rep., 331, 27 Am. & Eng. Ency., p. 1091. The weight to be accorded to such evidence is another thing.

It may be much or little, as the jury shall attach credibility, or as there shall be other evidence tending to support or contradict. As bearing on the general question now being considered, it may be here added that the evidence subsequently introduced made it appear that there was employed in defendant's office an order clerk who was in charge of the telephone, and whose duty it was to attend to telephone orders."

**Receiver in Bankruptcy—Right to Possession of Assets Dates from Appointment.**—Where, between the entry of a decree appointing a receiver in bankruptcy and the filing of his bond, an officer takes possession of goods of the alleged bankrupt under a writ of replevin, it is held, *In re Alton Manfg. Co.*, 19 Am. B. R., 805, that such seizure is an unauthorized interference with the possession of the bankruptcy court, as the bankrupt's title to the goods upon his adjudication vested in the receiver as of the date of his appointment.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17. SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Roach & Watkins and Ralph D. Quinter, Attorneys  
In the Supreme Court of the District of Columbia.  
Ellen C. Edmonston, Complainant, v. Owen S. Edmonston and Mary Bradley, Defendants.  
No. 27,860. Equity Doc. —.

The object of this suit is to obtain a divorce on the ground of adultery. On motion of the complainant, it is this 20th day of July, 1908, ordered that the defendants, Owen S. Edmonston and Mary Bradley, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. THOS. H. ANDERSON, Justice.  
True copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 81-3t

J. W. Glennan, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Mary R. Steever, Deceased.  
No. 15,395. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
[Seal] THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-3t

## Legal Notices.

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susan Gangewer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 33d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,423. Administration. [Seal.] 31-St

Frank E. Elder, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas D. Yeager, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1908. MARY A. YEAGER, 225 O St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,410. Administration. [Seal.] 31-St

Edward S. Bailey, Attorney  
In the Supreme Court of the District of Columbia.  
Frank E. Ross v. Julia B. Ross.  
No. 37,375. Equity Dec. —.

The object of this suit is to obtain a divorce from bed and board on the ground of desertion. On motion of the complainant, it is, this 24th day of July, 1908, ordered that the defendant, Julia B. Ross, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before

[Seal] said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 31-St

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary W. Strong, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 33d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,576. Administration. [Seal.] 31-St

Smith & Walker, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marshall D. Gaines, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of July, 1908. CLARA GAINES, Orange, Va., Box 83. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,415. Administration. [Seal.] 31-St

## Legal Notices.

[Filed July 20, 1908. J. R. Young, Clerk.]

W. A. Johnston, Attorney  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Robert L. Pitcock, Complt., v. Nora F. Pitcock et als.,  
Defendants. Equity, No. 37,542.

## ORDER OF PUBLICATION.

It appearing to the court that the defendant, Richard Easton, or Eastern, is a nonresident of the District of Columbia, it is, by the court, this 20th day of July, A. D. 1908, on motion of the complainant, by his solicitor, ordered that said Richard Easton, or Eastern, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. The object of this suit is to obtain an absolute divorce in favor of Robert L. Pitcock from his wife, Nora F. Pitcock, on the ground of adultery, the said Richard Easton, or Eastern, being named as co-respondent. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 31-St

Douglass S. Mackall, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edgar F. Watkins, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of July, 1908. LUTHER S. FRISTOE, by Douglass S. Mackall, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,603. Administration. [Seal.] 31-St

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen D. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 33d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,594. Administration. [Seal.] 31-St

J. W. Glennan, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of West Steever, Deceased.  
No. 15,394. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday, the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-St

**Legal Notices.**

**William A. Donoh, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Johanna Kiesecker, Deceased.**  
**No. 15,335. Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by William Kiesecker, it is ordered, this 30th day of July, A. D. 1908, that Ernest C. Kiesecker, and all others concerned, appear in said court on Tuesday, the 1st day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-St

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-St

**SECOND INSERTION.**

**W. M. Ellison, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. **EMMA E. LANE, 1410 Penn. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,406. Administration. [Seal.] 80-St

**Jas. E. Padgett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Richard Emmons, Deceased.**  
**No. 14,351. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara L. P. Emmons, it is ordered this 30th day of July, A. D. 1908, that Howard O. Emmons, John E. Emmons, and Earl Emmons, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-St

**R. R. Horner, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In the Matter of the Estate of Arthur Simmons, Deceased. Probate No. 15,126.**

Application having been made by Alice Simmons for the probate of the last will and testament of Arthur Simmons, deceased, and for letters testamentary thereon, it is by the court, this 23d day of July, A. D. 1908, ordered that Hannah A. Simmons, and all others concerned appear in said court on or before the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills. 80-St

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills. 80-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Caroline Miller, Deceased.**  
**No. 15,337. Administration Docket 88.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by National Savings and Trust Company, it is ordered this 21st day of July, A. D. 1908, that Emma J. Bell, Arthur Williams, John S. Wood, James Michael, Charles Shafer, George McElliot, Rebecca Garner, Harriet Crouse, Lewis Myers, Kate Athey, Elizabeth Fenlon, Mollie Sprague, Katie Buckwalter, Charles F. Boyer, Samuel K. Boyer, Carrie F. Toland, Noble G. Toland, Arthur De Toland, Emory B. Toland, and the unknown heirs at law and next of kin of said Caroline Miller, and all others concerned, appear in said court on Wednesday, the 3d day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-St

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-St

**Carlisle & Luckett, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In Re Estate of Juliana Walker Gales, Deceased.**  
**No. 15,344. Administration Docket.**

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by John McClellan and Oscar Luckett, it is ordered this 17th day of July, A. D. 1908, that William V. Marmion, Mary Lee Holbrugge, Juliana Gales Torno, Frederick Wupperman McClellan, Rose Lee Walker McClellan, Josephine Frances Johnston McClellan, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal.] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills. 80-St

[Seal.] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills. 80-St

**Oscar Nauck, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry Jaeger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. **ARMIN JAEGER, 76 Harford Road, Baltimore, Md.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,319. Administration. [Seal.] 80-St

**W. C. Martin, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Emily Haines, alias Haynes, Deceased.**  
**No. 15,353. Administration Docket —**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with a copy of the will thereto annexed, on said estate, by Martha Gant, it is ordered this 16th day of July, A. D. 1908, that Henry Jackson, Robert Jackson, and James Jackson, and all others concerned, appear in said court on Tuesday, the 18th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-St

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-St

**Legal Notices.****THIRD INSERTION.****W. H. Sholes, Attorney****In the Supreme Court of the District of Columbia.****Elizabeth S. Danenhower et al., Complainants, v. Joseph L. Danenhower et al., Defendants.**  
Equity No. 27,857.

The object of this suit is to sell original lot five (5) and the west 8 feet 8 1/2 inches front by the full depth thereof of original lot four (4) in square two hundred and fifty (250), in the city of Washington, District of Columbia, and reinvest the proceeds as provided in section 100 of the Code of Laws for said District. On motion of complainants, it is this 14th day of July, A. D. 1908, ordered that the defendants, Joseph L. Danenhower, William J. Danenhower, Rebecca E. Gallagher, Frank G. Danenhower, Mary E. Bryant, Clarence E. Danenhower, John H. Danenhower, an infant; Joseph L. Danenhower, an infant; Elizabeth Rust, Francis Danenhower, Laura Green, Marshall Philpitt, an infant, and Ethel Philpitt, an infant, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order

[Seal] be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-3t

**Duane E. Fox and Geo. Francis Williams, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William L. Ralph, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. LOUISE M. RALPH, Care Fox & Williams, Washington Loan and Trust Company, Washington, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,202. Administration. [Seal.] 29-3t

**In the Supreme Court of the District of Columbia.****George J. Greenfield, Executor of the Last Will and Testament of Charlotte E. Williams, Deceased, Complainant, v. Mary G. Mew et al., Defendants.**  
Equity No. 25,983.

William M. Lewin, trustee in the above-entitled cause, having reported to the court that he has sold the real estate in said cause involved, to wit, the east 22.1 feet of part of lot numbered three (3) in square numbered three hundred and seventeen (317), with improvements thereon, the said property being premises numbered 1151 street northwest, in the city of Washington, in the District of Columbia, for the sum of eighty-eight hundred and seventy dollars (\$8870.00), it is this 15th day of July, A. D. 1908, ordered that such sale be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 17th day of August next. Provided a copy of this order be inserted in The Washington Law Reporter once in each of three successive weeks before the said day last hereinbefore mentioned. By the Court: WRIGHT, Associate Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-3t

[Seal] Allen C. Clark, Attorney  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Helen W. Jackson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. ANNIE WORRELL, care of Allen C. Clark, 605 F st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,407. Administration. [Seal.] 29-3t

**Legal Notices.**

[Filed July 13, 1908.]

**A. Lettwich Sinclair, Attorney****In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.****In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys, Authorized by the Act of Congress, Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company in the District of Columbia.**  
District Court No. 671.

Notice is hereby given that we, the undersigned, have been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress, approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Tuesday the Twenty-second day of September, A. D. 1908, at the United States courthouse (City Hall), in said District, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the real property affected by the changes made in the grades of the following named streets, avenues, and alleys in said District and hearing testimony touching the damages resulting to said property from said changes of grade, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled, "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: South Capitol street from D street to Canal street; Sixth street southwest, between D street and School street; C street southwest, between Sixth street and Seventh street; Virginia avenue southwest, between Sixth street and Seventh street; D street southwest, between Sixth street and Sixth and One-half (6 1/2) street; Seventh street southwest, between D street and Maryland avenue; C street southwest, between Seventh street and Eighth street; the alleys in square numbered four hundred and sixty-four (464); Tenth street southwest, between Maryland avenue and C street; Maryland avenue southwest, between Ninth street and Eleventh street, and Fourteenth street southwest, between D street and Water street. All owners of real property damaged by the changes made in the grades of any of said streets, avenues, or alleys will file a petition with us, in this cause, duly signed and sworn to, for an allowance of damages within twelve months after the said twenty-second day of September, A. D. 1908. It is provided in and by the aforesaid act of Congress, approved June 29, 1906, that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine. CHARLES [Seal] A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission Appointed to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 29-6t

**Sheehy & Sheehy, Solicitors****In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.****In the Matter of the Dissolution of The American Home Life Insurance Company, a Corporation.**  
In Equity No. 27,923.

Upon consideration of the petition filed in the above entitled matter by James H. Vermilya, Charles T. Yoder and James H. Caton praying for a dissolution of The American Home Life Insurance Company, a corporation chartered under the laws of the District of Columbia, it is, by the court, this 14th day of July, A. D. 1908, ordered that all persons interested in said corporation appear in the Supreme Court of the District of Columbia, by the 25th day of August, A. D. 1908, and show cause, if any they have, why said corporation should not be dissolved as prayed. Provided that a notice of this order be published in The Evening Star, a newspaper of general circulation, weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid, and that said notice, also, be published in The Washington Law Reporter.

[Seal] WRIGHT, A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

Edward S. Bailey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Adelia L. S. Thombs, Deceased.  
No. 15,810. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles H. Horton and Benjamin G. Pool, executors named in said last will and testament, it is ordered this 14th day of July, A. D. 1908, that Belle Shaw, Lizzie Barton Kingsley, John W. Wright, Alfred G. Wright, Adeline Scott, Ami Farnham, Mrs. G. W. Sylvester, Mrs. Miller, Effie M. Bunnell, Lida L. Ripley, and all the unknown heirs at law and next of kin of said deceased, and all others concerned, appear in said court on Thursday, the 20th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less

[Seal] than thirty days before said return day.  
WRIGHT, Justice. Attest: James Tanner,  
Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-St

R. P. Shealey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James H. McGill, Deceased.  
No. 15,821. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Robert Preston Shealey and Samuel A. Drury, it is ordered this 18th day of July, A. D. 1908, that John L. McGill and Charles McGill, and all others concerned, appear in said court on Monday, the 17th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to

[Seal] be not less than thirty days before said return day.  
WRIGHT, Justice. Attest: James Tanner,  
Register of Wills for the District of Columbia, Clerk of the Probate Court. 29-St

H. S. Matthews, Solicitor  
In the Supreme Court of the District of Columbia,  
James B. Nourse et al., Complainants, v. Rosa Chew Williams et al., Defendants.

In Equity, No. 27,885. Docket No. —

The object of this suit is to obtain the sale for the purpose of partition, of all that certain tract of land situate in the District of Columbia and known as the "Highlands," said tract being located on the east side of Wisconsin avenue and containing 22 and 437-1000 acres; also, lot 91 in William J. Partello's subdivision of lots in square 289 in the city of Washington, District of Columbia. On motion of the plaintiffs, it is, this 16th day of July, A. D. 1908, ordered that the infant defendants, Mary P. Nourse, Charlotte St. G. Nourse, Walter F. Nourse, Charles J. Nourse, Jr., and Juliette L. Nourse, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Washington Herald before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

Newton & Gillette, Solicitors  
In the Supreme Court of the District of Columbia,  
Sarah Parsley et al. v. William T. Collins et al.

No. 27,897. Equity Doc. 61.

The object of this suit is to obtain a decree for partition by sale of part lot thirteen in square four hundred and five in the city of Washington, in the District of Columbia, as described in the bill in this cause. On motion of the complainants it is, this 15th day of July, 1908, ordered that the defendant, William T. Collins, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The

Washington Law Reporter and The Washington Herald before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

**Legal Notices.**

Archer & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Maurice J. Soule, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. CLARA E. SOULE, 1806 Corcoran st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,848. Administration. [Seal.] 29-St

Wm. L. Pollard, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Alice Brown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. ANNIE T. BROWN, 418 You st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,885. Administration. [Seal.] 29-St

G. Percy McGlue, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Denis McKeown, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of July, 1908. PATRICK MCKEOWN, 1404 8 st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,218. Administration. [Seal.] 29-St

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of J. Henley Smith, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a probate court, appointed Monday, the 10th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person, or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 15th day of July, 1908. MARY R. HENLEY SMITH; CLAUDIAN B. NORTHROP; and AMERICAN SECURITY AND TRUST COMPANY, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,528. Administration. [Seal.] 29-St

Carlisle & Luckett, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas Barry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of July, 1908. MARGARET BARRY, 1013 C st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,408. Administration. [Seal.] 29-St



**Legal Notices.**

**Rudolph H. Yeatman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice,** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph Y. Potts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of July, 1908. LEVIN J. WOOLLEN, 810 V st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,338. Administration. [Seal.] 29-St

**Hill, Roger & Mattingly, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice,** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Nellie Louise Allen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. M. JENNIE McELFRESH, 1004 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,355. Administration. [Seal.] 29-St

**M. J. Colbert, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary E. Killigan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of July, 1908. THOMAS J. KILLIGAN, No. 1718 7th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 29-St

**W. F. Mattingly and W. C. Clephane, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Maria G. Dewey, Complainant, v. William B. Todd et al. Defendants.**

No. 26,880. Equity Dec.

The object of this suit is to obtain a decree authorizing the complainant to pay into court such sum of money, if any, as is properly payable by her, in excess of the aggregate of the balance of the personal estate of Marianne A. B. Kennedy, deceased, which has already come and may hereafter come into the hands of the executor of her estate, as may be determined by the court necessary to satisfy and pay the legacies bequeathed by the will of said decedent, after deducting from said funds all debts, funeral expenses, and costs of administration; and upon payment by said complainant as aforesaid, that said executor be directed to execute to her a deed in fee to certain real estate known as 715 Market Space, Washington, D. C.; and incidentally for such accounting and orders as may be necessary. On motion of the complainant it is, this 10th day of July, 1908, ordered that the defendant, May Bacon, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided

a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate of the District of Columbia letters testamentary on the estate of Ferials A. Cleveland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated to the subscriber, on or before the 10th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of July, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Frederick Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,173. Administration. [Seal.] 29-St

**FOURTH INSERTION.**

**John B. Lerner, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**J. Edward Chapman, Complainant, v. the Unknown Heirs, Allenees, and Devisees of Charles G. Paleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, Deceased, Defendants.**

Equity, No. 27,859.  
 The object of this suit is to establish the title of the complainant by adverse possession to original lot numbered twenty-five (25), in square numbered four hundred and ninety-nine (499), of the city of Washington, District of Columbia. On motion of the complainant, it is, this 8th day of July, 1908, ordered that the defendants, the unknown heirs, allenees, and devisees of Charles G. Paleske, James Olden, Richard Peters, J. Attamont Phillips, Littleton Kirkpatrick, James Bayard, and Thomas Astley, all deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 28-St

**SIXTH INSERTION.**

**E. A. Jones and G. C. Shinn, Solicitors**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Thomas R. Harney, Plaintiff, v. Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the Unknown Heirs, Devisees, and Allenees of such of them as are dead; and the Unknown Heirs, Devisees, and Allenees of Julianna Barry, Deceased.**

In Equity, No. 27,848.

**ORDER OF PUBLICATION.**  
 The object of this suit is to establish title in complainant by adverse possession to all of original lot twenty-nine (29), in square eight hundred and one (801), in the city of Washington, District of Columbia. On motion of complainant, by his solicitor, Eugene A. Jones, it is, this 18th day of May, 1908, ordered that Griffith C. Barry, Ann Barry, Mary P. Hanson, Thomas N. Hanson (her husband), Mary Barry, James Barry Adams, Edward Barry, Emily Davis, Arthur Barry, William Barry, Clement Barry, Kate Barry, Fannie Bryan; or, if any of them be dead, the unknown heirs, devisees, and allenees of such of them as are dead; and the unknown heirs, devisees, and allenees of Julianna Barry, deceased, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three (3) months from this date; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three successive months in The Washington Law Reporter and The Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. may 22, 29; June 19, 26; July 24, 31.

Justice blanks of every description for sale at this office.

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - AUGUST 7, 1908

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### OUR PRINTERS' OUTING.

The Law Reporter Printing Company's Outing to Its Employees.

On Saturday, August 8, 1908, the employees of The Law Reporter Printing Company will go to Chesapeake Beach on their annual outing. A program of field and outdoor sports has been arranged. The sports will commence at 11 o'clock and continue until 12.30, when time will be called for lunch. At 1 o'clock two teams selected from among the employees will play ball. At the conclusion of the ball game all will proceed to the Belvidere Hotel where a banquet of forty-five covers will be given to the men and a few invited guests.

It is the custom of this company to have these outings annually and the present promises to be one of the most successful ever given by the company.

### Liability for Negligence Causing Fright or Shock.

In *Miller v. Baltimore and Ohio Southwestern Railroad Company*, decided June 9, 1908, by the Supreme Court of Ohio, the negligence complained of was the running of a locomotive engine against the dwelling-house of the plaintiff. The complaint stated two causes of action, one for injuries to the plaintiff's property, and the other alleging that by reason of such negligence plaintiff "had suffered a severe nervous shock that shattered her nervous

system and caused her great bodily pain and mental anguish," etc. A demurrer to the second cause of action was sustained by the trial court; and in affirming the judgment the Supreme Court held that, in an action to recover damages for injuries sustained through the negligence of another the law regards only the direct and proximate results of the negligent act, as creating a liability against the wrongdoer. In contemplation of law an injury that could not have been foreseen or reasonably anticipated as the probable result of an act of negligence is not actionable. Applying these principles, it was held that no liability exists for acts of negligence causing mere fright or shock, unaccompanied by contemporaneous physical injury, even though subsequent illness results, where the negligent acts complained of are neither wilful nor malicious. The opinion cites many authorities in support of the conclusion reached.

In *Railroad Co. v. Dashiell*, 24 Wash. Law Rep., 40, the Court of Appeals of this District, in an opinion by Mr. Chief Justice Alvey, held erroneous a charge of the trial court, in an action for injuries received in a railroad collision, which authorized the jury to award to the plaintiff, in addition to damages for pain and suffering, "damages for any impairment of the plaintiff's nervous system . . . incurred as a direct result of the nervous shock received by her on the occasion of the accident." Such claims for compensation, it was declared, are subject to all the objections to remote and speculative damages.

### Evidence of Physicians; Waiver of Privilege in Application for Insurance.

In view of the statutes rendering a physician incompetent to testify to professional communications from his patient and knowledge of his patient acquired in a professional way, it is not unusual for applications for life insurance to contain a provision in which the applicant waives such privilege. The validity of such a provision was considered by the Supreme Court of Kansas, in the recent case of *Metropolitan Life Insurance Company v. Brubaker*, wherein it was held that an applicant for life insurance may make a valid contract with the insurer waiving the privilege afforded by such statutes. In the case of *Hawkins v. Metropolitan Life Insurance Co.*, 36 Wash. Law Rep., 88, the application contained such a provision; and while the case was determined in favor of the plaintiff on other grounds which made it unnecessary to determine the validity of the waiver, Mr. Justice Barnard expressed the opinion that its effect was to render the testimony of the physician competent.

## Court of Appeals of the District of Columbia.

FRANK B. SLATER, APPELLANT,

v.

STEVENS M. TAYLOR.

MALICIOUS PROSECUTION; PROBABLE CAUSE; LIBEL;  
ASSAULT; SEC. 819, CODE D. C., CONSTRUED.

1. In an action for malicious prosecution want of probable cause and malice, express or implied, must concur to warrant a recovery.
2. Plaintiff, having a claim against defendant for collection, went to his home, in an apartment house, and defendant promised payment in a month. Defendant's apartment opened into a public hall of the apartment house. Plaintiff called frequently thereafter, and being denied admission stuck cards around the door and entrance of defendant's apartment, which gave plaintiff's name and his occupation as a collector, on some of which were written, after the words "Call at once," the words "This must be paid," on others, "Must have money," and on others "Call at once and pay." On two occasions plaintiff obtained admission, but as soon as defendant saw him defendant ejected him. Thereafter defendant filed an affidavit in the Police Court charging plaintiff with having accused him of a crime and conduct tending to disgrace him with intent to extort money or property from him; a warrant was issued and plaintiff arrested and held for trial. Subsequently a nolle prosequi was entered. Plaintiff thereupon brought suit for malicious prosecution, libel, and assault. The trial court directed a verdict for defendant. *Held*—
  - (1) That the plaintiff had, by his acts in endeavoring to collect the claim, accused defendant of conduct tending to subject him to the contempt of society, with intent to extort money from him, in violation of sec. 819 of the Code, and therefore defendant had probable cause for the affidavit which formed the basis of the action.
  - (2) That the affidavit was therefore a privileged communication and the count charging libel must for that reason fail.
  - (3) That plaintiff, by entering defendant's apartment knowing he was not wanted there, was a trespasser, and defendant had a right to eject him, and as no more force than was necessary was used in so doing, a verdict for defendant was properly directed on the count charging assault and battery.

No. 1811. Decided March 31, 1908.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,738, entered upon a verdict directed by the court in an action for an assault and battery, etc. Affirmed.

Mr. L. A. BAILEY for the appellant.

Mr. A. S. TAYLOR and Mr. JOHN E. TAYLOR for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This appeal brings up for review the action of the trial court, at the close of the plaintiff's testimony, in directing a verdict for the defendant on each of the three counts of the declaration, charging, respectively, malicious prosecution, libel, and assault and battery.

Plaintiff's father entrusted to him for collection a claim against defendant for \$450, which plaintiff contended represented two loans from his father to defendant. Plaintiff was to receive one-half of whatever he could collect. He called at the home of the defendant, who lived in an apartment house containing a public hall into which the outer door of defendant's apartment opened, and defendant promised payment in a month. Plaintiff waited two weeks, and called again, but was not admitted. He called frequently thereafter,

was not admitted, and each time "stuck some cards around the face of the door and entrance." On one occasion defendant's little girl admitted him, but as soon as defendant saw him, defendant took him by the coat collar and ejected him. He finally took with him his wife, and upon ringing the door bell they were admitted by a child. The defendant "grabbed him and put him out . . . and slammed the door." Plaintiff left in all thirty cards at defendant's door, and upon each card was printed or stamped the following:

"Collection Dep't.

F. B. Slater,

Collector.

Room 43, 622 F. N. W.

Call at once."

Upon twenty-eight of the thirty cards the name of the defendant was written in pencil. Upon one of said twenty-eight cards there was written in pencil, "This must be paid;" upon two of said twenty-eight cards, "Must have money," and upon one of said twenty-eight cards after the words "Call at once" the words "and pay."

Shortly after plaintiff and his wife were ejected from defendant's apartment, defendant, as complainant, filed an affidavit in the Police Court charging plaintiff with having accused defendant of a crime and conduct tending to disgrace defendant with intent to extort money or property from defendant. A warrant was issued out of said court, and the defendant arrested thereon and gave bail for appearance to answer said charge. On the day finally fixed for the trial the district attorney endeavored to obtain a promise from plaintiff that he would desist from putting up cards, but it does not appear that such a promise was made. The district attorney, however, did enter a nolle prosequi, and thereby terminated the prosecution.

Under the facts stated, did the court err in holding that the defendant had probable cause for swearing out the affidavit?

Section 819 of the Code provides that:

"Whoever verbally or in writing accuses or threatens to accuse any other person of a crime or of any conduct which, if true, would tend to disgrace such other person, or in any other way subject him to the ridicule or contempt of society, or threatens to expose or publish any of his infirmities or failings, with intent to extort from such other person anything of value or any pecuniary advantage whatever, or to compel the person accused or threatened to do or to refrain from doing any act, and whoever with such intent publishes any such accusation against any other person shall be imprisoned for not more than five years or be fined not more than one thousand dollars, or both."

What was the object and purpose of the plaintiff in posting conspicuously on defendant's door, which, as previously pointed out, opened into a public hall, these thirty cards? Obviously to coerce payment of the money which he claimed to be due. Manifestly the plaintiff, by frequently and persistently accusing the defendant with not paying plaintiff's claim, and by attracting the notice of defendant's neighbors and friends thereto, hoped to compel payment, or, to use the language of the statute, "extort" payment. Extort, as used in the statute, means moral compulsion—the result of exposing or threatening to expose the person addressed to the ridicule or contempt of soci-

ety. A man who, without cause, fails to pay his debts, merits and receives the contempt of society. But the law has provided legitimate means for the collection of debts found to be due, and it is in the interest of justice and the public peace that such acts as the record discloses the plaintiff was guilty of be suppressed. That the defendant had acknowledged the claim can make no difference, since the statute is designed to prevent any pecuniary advantage being gained by the inhibited means. Under any other interpretation the issue in each case would be whether the claim against the person addressed was a legal claim. The result would be to transform a criminal trial into a quasi civil proceeding.

There is analogy between this statute and the act of Congress of September 26, 1888 (25 Stat. L., 496). By that act all matters otherwise mailable upon the envelope or outside cover or wrapper of which any delineations, epithets, terms, or language calculated by the terms, or manner, or style of display, and obviously intended to reflect injuriously upon the character or conduct of another, may be written, or printed, or otherwise impressed or apparent, is declared to be non-mailable under a penalty of not more than \$5,000 fine or imprisonment not more than five years, or both. It has been held that mailing an envelope, upon which were the words "Excelsior Collection Agency" printed in very large full-faced capital letters covering more than half the envelope, constituted an offense within the act. *U. S. v. Brown*, 43 Fed., 137. The court said: "The sending of letters with those words on the outside to a person would tend to the inference that the character, or conduct, or both, of the person sent to, in respect to the fulfillment of pecuniary obligations, was such as to make the sending necessary or justifiable, unless they should be so restricted by construction with other words as to show that they were used for directions to return, if not called for, or other legitimate purpose not referring to the person addressed. . . . The object probably was to make the person pay up to avoid repetition of the reflection." In *U. S. v. Simmons*, 61 Fed., 640, it was held that the words "I see . . . you do not intend to pay any attention to . . . your agreement" on a postal card were "obviously intended to reflect upon the character and conduct of the person addressed," and hence within the statute. See, also, *U. S. v. Dodge*, 70 Fed., 235.

There was no controversy as to the facts in the present case; hence it became the duty of the court to determine as matter of law the question of probable cause and a finding of probable cause, if sustained, defeats plaintiff's action since want of probable cause and malice, express or implied, must concur to warrant a recovery. *Spitzer v. Friedlander*, 14 App. D. C., 556; 27 Wash. Law Rep., 368; *Crescent Live Stock Co. v. Butchers' Union*, 120 U. S., 149.

We think the trial court fully justified in ruling that the plaintiff had accused defendant with conduct which, if true, would tend to subject him to the contempt of society with intent to extort money from the defendant, and that, therefore, the defendant had probable cause for swearing out the affidavit which forms the basis of this action.

Having ruled that the defendant had probable cause for swearing out said affidavit, it follows that the affidavit was a privileged communication,

and that, therefore, the count charging libel must fall.

According to plaintiff's own testimony he fully understood that he was not wanted in defendant's apartment. He had repeatedly tried to gain entrance, and upon the occasion in question he was without doubt a trespasser. Owing to his previous conduct he must have known that the defendant would eject him. It appearing from plaintiff's own statement that the defendant used no more force than was necessary in ejecting him, the court properly directed a verdict on the count charging assault and battery.

The judgment is affirmed, with costs.

Affirmed.

**Receiver—Jurisdiction to Appoint—Compensation—Attorney's Fees.**—In the case of *In re T. E. Hill Co.*, 20 Am. B. R., 73, the United States Circuit Court of Appeals, Seventh Circuit, has held that where, in an involuntary bankruptcy proceeding, the bankruptcy court has acquired jurisdiction of the parties and the subject-matter, its power to appoint a receiver to preserve the estate is not affected by the fact that the respondent, a corporation, was not subject to adjudication as a bankrupt; and that the receiver will be allowed compensation and the expenses of the receivership out of the assets in his hands, though the court on dismissal of the proceedings may ultimately charge such expenses in whole or in part against the petitioning creditors.

It was also held, in the *Hill Co.* case, that ordinarily the duties of a receiver in bankruptcy neither require nor justify the employment of an attorney, and no claims for such services is chargeable per se against the estate predicated alone upon the fact of employment and service rendered, and that where the attorneys for a receiver in bankruptcy were actively engaged throughout a protracted contest in bankruptcy as attorneys for the petitioning creditors, and were not independent counsel for the receiver, and the bankruptcy proceedings are dismissed, an order disallowing the claim of the attorneys for services to the receiver as not a proper charge against the bankrupt estate will be affirmed, as such expenses may be rightly charged in whole or in part against the petitioning creditors.

**Provability of Claims in Bankruptcy—Petition in Bankruptcy Filed Prior to Date Set for Consummation of a Contract.**—In the case of *Phenix National Bank v. Waterbury*, 20 Am. B. R., 141, it is held that the present bankruptcy act differs from its predecessors in that the provability of a debt is specifically governed by the date of the filing of the petition. If it be then owing it may be proved; if it becomes due after the filing of the petition, even if before the adjudication, it is not "absolutely owing" and is not discharged. In the case of a contract of sale to be consummated at a future date when the vendee files a petition in bankruptcy prior to that date, the vendor at his election may treat the contract as broken by anticipation and assert and prove his claim in bankruptcy for the damages for the breach, or may ignore the repudiation and wait for the date fixed for the consummation of the sale, tender the goods and sue for the purchase price. In the latter case the claim is not discharged by prior adjudication in bankruptcy.

# Supreme Court of the United States.

ADOLPH F. LIPPHARD ET AL., PLAINTIFFS  
IN ERROR AND APPELLANTS,

v.

IDA P. HUMPHREY ET AL.

EVIDENCE; PRESUMPTION; KNOWLEDGE OF CONTENTS  
OF WILL BY ILLITERATE TESTATRIX; DECLARA-  
TIONS OF TESTATRIX.

1. A testatrix will not be presumed ignorant of the contents of a will, which was not read to her at the time of execution, because she can not read, where there is a total lack of proof of fraud, undue influence, or want of testamentary capacity attending the execution of the will.
2. Declarations of an illiterate testatrix prior and subsequent to the date of her will, as to how she intended to dispose, or had disposed, of her property, are properly held inadmissible to show that she was ignorant of its contents, where there was no evidence of testamentary incapacity at the date of the will, and nothing in the evidence excluded from which it could be inferred, and there was no evidence of fraud or undue influence.

No. 188. Decided April 6, 1906.

IN ERROR to and appeal from the Court of Appeals of the District of Columbia to review a decree which affirmed a decree of the Supreme Court of the District, admitting a will to probate. Affirmed.

See same case below, 28 App. D. C., 355: 34 Wash. Law Rep., 788.

Statement by Mr. Chief Justice FULLER:

Loraine Lippard, of the District of Columbia, died December 9, 1903, leaving a paper writing purporting to be her last will and testament, bearing date April 27, 1898, duly attested by three witnesses, and naming Rev. Mr. Meador as executor.

Decedent left surviving her as her next of kin and sole heirs at law her husband, Adolph F. Lippard, Sr.; three sons, named John, William A., and Adolph F. Lippard, Jr.; two daughters, named Sophia L. Hellen, born Lippard, and Capitola L. Anderson, born Lippard; sixteen grandchildren, four of whom were infants under the age of twenty-one years. All the other of her heirs and next of kin were of lawful age.

Decedent's property consisted of a small quantity of personal property, valued at \$350 and some real estate value at \$10,000.

The husband, Adolph F. Lippard, Sr., and two of the sons, William A. and Adolph F. Lippard, Jr., filed a caveat to the probate of the will. All of the other next of kin and heirs at law became parties in one way or another. Before the issues were framed on the caveat the Rev. Mr. Meador departed this life. Thereupon, decedent's daughters, Capitola L. Anderson and Sophia L. Hellen, beneficiaries under the writing, petitioned the court for leave to propound said paper writing as and for the last will of decedent, and an order was passed by the court below authorizing this to be done. Thereafter a decree was passed framing issues upon the caveat to be tried by a jury. The issues were five in number and were as follows:

"1. Was the paper writing dated April 27, 1898, the last will and testament of said Loraine Lippard?"

"2. Was the said writing executed and attested in due form, as required by law.

"3. At the time of the execution of said paper

writing, was the said Loraine Lippard of sound and disposing mind and capable of making a valid deed or contract?

"4. Was said writing procured by fraud or undue influence, practised upon her by any person or persons?"

"5. Was the signature of the said Loraine Lippard procured by force exercised upon her by any person or persons?"

Barnard, J., presiding at the trial of the issues, directed the jury to find the third, fourth, and fifth issues in favor of the caveatees, on the ground that the evidence was insufficient to warrant the jury in finding a verdict thereon in favor of the caveators. The first and second issues were submitted to the jury with instructions by the court to the effect that unless the jury believed that the contents of the paper were known to testatrix at the time of execution, they should find for the caveators. If, however, they should find from the evidence that testatrix did know the contents of the paper, and did sign the same by her mark in the presence of witnesses, who signed the same as witnesses in her presence, the verdict should be in favor of the caveatees. The jury found the issues in favor of the caveatees, and the will was accordingly admitted to probate and record May 2, 1906.

From this decree the caveators appealed to the Court of Appeals of the District of Columbia (28 App. D. C., 355), which affirmed the decree of the Supreme Court of the District, and thereupon the case was brought to this court.

The paper writing in controversy was witnessed by three credible witnesses, all of whom testified as witnesses for the caveatees. From their testimony it appeared that on the 27th day of April, 1898, Mrs. Loraine Lippard brought the writing to the office of Miss Parker, one of the attesting witnesses, with whom she had long been acquainted, and told her that it was her last will and testament, and that she wanted it attested by three witnesses. Two other witnesses with whom she was also acquainted, one of them for forty years, were procured, and, all three being present, testatrix declared the paper writing to be her will and signed it by her mark thereto in the presence of all the witnesses, and they signed their names thereto as attesting witnesses in her presence. The testatrix was at the time of sound mind and capable of making a valid deed or will. The will was not read in the presence of the witnesses, and after the testatrix had subscribed her "mark" and the will had been witnessed, it was handed to her and she took it away with her. After Mrs. Lippard's death the will was produced by Rev. Mr. Meador and given by him to an attorney, who lodged it in the office of the register of wills.

Evidence was adduced on the trial on behalf of the caveators that Mrs. Lippard could not read or write; and she was a licensed midwife and had a great number of cases; that the title to the real estate devised by the will was originally in her husband; that in March, 1857, he put a trust on the property, and it was subsequently sold thereunder; that he afterward took title to the property and again it was sold, and then the title was taken in the wife's name. The husband's testimony tended to show that he was improvident. Testatrix was an energetic woman and a good wife. Part of the property when purchased was vacant

land. In 1894 this land was improved by two houses. Testatrix made the contract for the erection of these houses and attended to the building of the same. The husband and wife had lived happily together for sixty-five years.

The will devised and bequeathed the entire estate of the testatrix to the Rev. Chastain C. Meador in trust: (1) To pay all funeral expenses and debts; (2) for the use of her husband, Adolph F. Lipphard, during his life; (3) to pay the expenses of said husband's last illness and funeral; (4) upon the death of the husband, to divide the same among children named, according to the directions therein contained; the trustee also being appointed executor. The real estate consisted of three lots, two of which were specifically devised to the two daughters.

Mr. CHAPIN BROWN, Mr. CHARLES H. BAUMAN, and Mr. J. P. EARNEST for plaintiffs in error and appellants.

Mr. B. F. LEIGHTON and Mr. C. CLINTON JAMES for defendants in error and appellees.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The contention of the appellants is that, as testatrix could not read, and as the will was not read to her at the time of its execution, it was, therefore, to be presumed that she did not know the contents of the will when she executed it, or that the jury ought not to have been allowed to presume from the evidence produced before them that the testatrix had knowledge of the contents of the will.

Mrs. Lipphard brought the will with her to the office of one of the attesting witnesses for the purpose of execution, and, after its execution, took it away with her, and at her death it appeared in the possession of the Rev. Mr. Meador, the executor named therein, and by whom it was propounded for probate and record. She declared to the witnesses that it was her will, and requested them to attest it as such; and its provisions were reasonable and natural. She was shown to be a woman of intelligence and business capacity; she was in bodily and mental health and vigor when the instrument was executed; and there was no suggestion of fraud or undue influence in the case.

In these circumstances the jury properly concluded that the testatrix knew the contents of the will at the time of its execution, and the court might well have directed such finding, unless the bare fact of the inability of the testatrix to read raised a legal presumption that she did not possess that knowledge, and the absence of the reading of the will to her at that time was fatal. But we know of no such presumption as matter of law, and, on the contrary, the presumption where a will is properly signed and executed is that the testator knows the contents. Where there is evidence of the practice of fraud or of undue influence, affirmative proof of knowledge of the contents may be necessary, but not so in any other case, simply because of a presumption arising from inability to read. *Taylor v. Creswell*, 45 Md., 422, 431; *Vernon v. Kirk*, 30 Pa., 224; *King v. Kinsey*, 74 N. C., 261; *Hoshauer v. Hoshauer*, 26 Pa., 404; *Clifton v. Murray*, 7 Ga., 565, 50 Am. Dec., 411; *Doran v. Mullen*, 78 Ill., 342; *Walton v. Kendrick*, 122 Mo., 504, 25 L. R. A., 701, 127 S. W., 872; *Nickerson v. Buck*, 12 Cush., 341; *Guthrie v. Price*, 23 Ark., 407.

In the latter case testatrix's name was subscribed to the will, and between her Christian and surname was her mark in the form of a cross. The attesting witnesses signed the will at her request, in her presence, and in the presence of each other. She produced the paper writing for them to attest, and declared that it was her will, and that she desired them to witness it as such. She did not write her name, but made her mark to the paper. It was not shown who did write her name to the will. It was not written by either of the witnesses, nor in their presence. Testatrix could not read, and the will was not read to her in the presence of, or to the knowledge of, the witnesses. The trial court instructed the jury, in effect, that notwithstanding the will was executed in accordance with the formalities prescribed by the statute, yet, it being shown that the testatrix could not read, the will was invalid, unless it was proved that it was read to her and that she was informed as to its contents. After a review of the authorities, the Supreme Court of Arkansas held such instruction to be erroneous, and Chief Justice English, in the concluding part of his opinion, said:

"It was proven that she could not read, and it was not shown that the will was read to her at the time it was executed, but it may have been before. She produced the will herself, declared it to be her will, asked the witnesses to attest it as such, signed it by making her mark. She was a woman of good sense, particular about her business transactions, and manifested her usual soundness of mind at the time. It is not shown that she was laboring under any feebleness of mind from disease, or approaching dissolution. The provisions of her will appear to be reasonable. It is not shown that any imposition was practiced upon her, or that her sons had any agency in the preparation of the will. It was erroneous for the court to tell the jury as a matter of law that, it being shown that she could not read, it was necessary to prove that the will was read to her. They had the right to infer, from all the circumstances, that she knew the contents of the will, though, as shown by the authorities above quoted, in determining whether there was fraud or imposition in the execution of the will, the fact that she could not read, and that the will was not read to her at the time she signed it, were circumstances to be considered by the jury."

True, the presumption that a party signing a will by mark, or otherwise, knows its contents, is not a conclusive presumption, but it must prevail in the absence of proof of fraud, undue influence, or want of testamentary capacity attending the execution of the will. In the present case there was no attempt to show that the testatrix was not capable of making a valid deed or contract at the date of making the will; on the contrary, the evidence showed that she was a woman of energy, capacity, and intelligence. Nor was any proof offered of fraud or undue influence in the production of the will. Mrs. Lipphard brought the will, as we have said, to Miss Parker's office for the purpose of having it executed; she declared to the attesting witnesses the paper to which she made her mark to be her last will and testament. She was a person of sound mind at the date of the will, and it was executed and attested in the manner required by statute.

It is obvious that the verdict of the jury ought not to be disturbed and a new trial allowed unless



some reversible error was committed in the course of the trial, and appellants insist that such error existed in the exclusion of evidence of declarations alleged to have been made by the testatrix prior and subsequent to the date of her will as to how she intended to dispose, or had disposed, of her property.

Decedent's husband testified that his wife talked to him often, prior to the date of the will, as to what she intended to do with her property after her death, and that they talked the matter over after the date of the will. He was asked what she said, but objection to the question was sustained. Appellants did not state what they expected to prove by the husband.

Albert R. Humphrey, another witness, testified that he had a conversation with Mrs. Lippard about two years before she died. He was asked the following questions:

"Did she tell you how she had left her property, or how she was going to leave it? A. Yes, sir.

"What did she say to you in reference to that matter?"

To which caveatees objected, and the court sustained the objection. Counsel for appellants stated that he desired to show by this witness that testatrix denied leaving the property as mentioned in the will, this being more than three years after the will was executed.

William A. Lippard, one of the caveators, was asked a similar question, and, upon objection, the court made a like ruling, excluding the evidence. He said that he had a conversation with her in reference to her will just before her death; that she told him how she had left her property.

Mrs. Sarah Lippard, the wife of one of the caveators, testified that eight or ten weeks before decedent died she asked her if she had made a will, and then she was asked the following question:

"What did she say in reference to what was in her will and what she had done with her property, if anything?"

On objection by the caveatees the evidence was excluded. Counsel of caveators stated to the court that he desired to show by this witness that testatrix had denied to the witness that she had left her property as and in the manner stated in the will.

Appellants' brief asserts that the offer was made in support of the issue of want of mental capacity in the testatrix at the time she made her will.

In *Den ex dem. Stevens v. Vancleve*, 4 Wash. C. C., 262, 265, Fed. Cas. No. 13,412, Mr. Justice Washington said that declarations of a deceased, prior or subsequent to the execution of a will, were nothing more than hearsay, and that there was nothing more dangerous than their admission, either to control the construction of the instrument or to support or destroy its validity.

In *Throckmorton v. Holt*, 180 U. S., 573, 45 L. ed., 673, 21 Sup. Ct. Rep., 474, Mr. Justice Peckham, speaking for the court, expressed the opinion, after much consideration, that the principles upon which our law of evidence is founded necessitated the exclusion of such evidence, both before and after the execution, saying:

"The declarations are purely hearsay, being merely unsworn declarations, and, when no part of the res gestæ, are not within any of the recognized exceptions admitting evidence of that kind.

"Although in some of the cases the remark is made that declarations are admissible which tend to show the state of the affections of the deceased as a mental condition, yet they are generally stated in cases where the mental capacity of the deceased is the subject of the inquiry, and in those cases his declarations on that subject are just as likely to aid in answering the question as to mental capacity as those upon any other subject. But, if the matter in issue be not the mental capacity of the deceased, then such unsworn declarations, as indicative of the state of his affections, are no more admissible than would be his unsworn declarations as to any other fact.

"When such an issue (one of mental capacity) is made, it is one which relates to a state of mind which was involuntary, and over which the deceased had not the control of the sane individual, and his declarations are admitted, not as any evidence of their truth, but only because he made them; and that is an original fact from which, among others, light is sought to be reflected upon the main issue of testamentary capacity.

"It is quite apparent, therefore, that declarations of the deceased are properly received upon the question of a state of mind, whether mentally strong and capable, or weak and incapable, and that, from all the testimony, including his declarations, his mental capacity can probably be determined with considerable accuracy."

And see *Re Kennedy*, 167 N. Y., 163, 176, 60 N. E., 442. In *Shailer v. Bumstead*, 99 Mass., 123, it was ruled:

"Where a foundation is laid by evidence tending to show a previous state of mind, and its continued existence past the time of the execution of the will is attempted to be proved by subsequent conduct and declarations, such declarations are admissible, provided they are significant of a condition sufficiently permanent, and are made so near the time as to afford a reasonable inference that such was the state at the time in question."

In the present case no foundation was laid for the admission of this evidence. Not a syllable of testimony was adduced by appellants to show that of testamentary capacity at the date of the will. For aught the record shows, she retained her mental powers up to the time of her death, which took place five years and eight months after making her will.

As we have said, appellants did not state what they expected to prove by decedent's husband, nor what they expected to prove by the evidence of William A. Lippard. This witness testified on cross-examination that he did not know his mother had made a will until after her death. In his direct examination he stated she told him, in a conversation had with her a week before she died, how she had disposed of her property by her will.

And so the offer to prove by Albert R. Humphrey, that the testatrix, two years prior to her death, and more than three years after the execution of the will, denied giving her property as provided by her will, or the similar offer made with respect to the witness Mrs. Sarah Lippard, wife of Adolph Lippard, as to alleged conversations with decedent eight or ten weeks before her death,

were at a period too remote to throw any light upon the mental condition of the testatrix at the time the will was made.

There was no evidence whatever of mental incapacity, and this particular evidence was too remote to justify any reasonable inference to that effect; and, if there was no lack of mental capacity, then this evidence would have no tendency to show that she did not have knowledge of the contents of the will when she executed it and declared it to be her last will and testament. Because she may have resisted importunity for information in respect to what she had done, three years after she had made her will, it does not follow that she did not know the contents of the will when she made it. There must be some other proof, some suspicious circumstances, some evidence of fraud or undue influence, before evidence of conversations years after the execution of the will should be admitted to show that she did not know what she was doing when she made it.

Decree affirmed.

**Negligence; Dangerous Premises; Licensees; Contributory Negligence.**

In *McDermott v. Sallaway*, in the Supreme Judicial Court of Massachusetts, Suffolk (May, 1906, 85 N. E., 422), it was held that where a passageway provided for customers by the proprietor of a meat shop was three feet and eight inches in width, a customer, while in the passageway dealing with an employee of the proprietor, was not as a matter of law negligent in failing to observe a door of a refrigerator on the side of the way and to apprehend that it was likely to be opened without warning. The court said:

"This is an action of tort to recover for personal injuries sustained by the plaintiff while in the meat and fish market of the defendant as a customer. No claim was made that there was any defective condition in the market. The plaintiff's sole contention was that there was carelessness on the part of the servant of the defendant in opening a door against her. In one part of the market there was a series of blocks and a bench, constituting a substantially continuous counter, on both sides of which was a space or passageway. The blocks were for the purpose of chopping meats and the bench was for the purpose of exposing for sale meats and other provisions. On the left side of this passageway was a door leading into the refrigerator for meats. This door weighed 162 pounds, opened outward, and, when closed, was held in place by a brass bar fastened to the jamb and swinging on a screw into a protruding, upturned brass finger on the door. This finger projected out from the door 2½ inches, and extended, tapering upward, 3 inches. The door weighed considerably less than many doors in courthouses and office buildings. The width of the passageway opposite the refrigerator was 3 feet 8 inches, but when the door swung open so as to extend across the passageway and at right angles to the block (which formed that part of the counter directly opposite the door) the space between the edge of the opened door and the block was 10½ inches. The plaintiff went into the store, and, standing at the block opposite the refrigerator door, where she had stood before when she had been a customer, gave her order for fish to a clerk, who went to another part of the store to fill it. There was no

fish on the chopping block, but it was brought and put in front of her. She testified that she had often been in the store before, but had not noticed the door; that on previous occasions she had gone through the store till she got some one to wait on her, and on other days had stood in same place opposite the block; and that while she was waiting and after she had been standing 'in front of the block,' as she thought, 'for a minute,' she was struck in the back by the brass finger on the door, 'thrown forward two or three steps toward' the block, and 'put out her hands to catch hold of the' block, and stood there for several minutes. She did not know by whom nor how the door was opened, further than this, and never had been given any warning not to stand in front of this door. The door was opened by an employee of the defendant, who testified that while the plaintiff was standing at the block he went to the refrigerator for some meat and asked her to step aside in order that he might go in. As he opened the door to come out he found that something hindered the opening of the door and he 'put head around the door and saw the plaintiff standing there. The door had struck her. He asked her to step out of the way so he could get out, and she moved and he squeezed himself out.' The plaintiff's testimony as to the number of customers varied from saying once that there were 'dozens' and again that she could not tell how many there were; also that they were standing 'all over the store,' and that there were but two or three on 'the side of the table' where the refrigerator was.

"An employee of the defendant testified that people went down either passageway as they chose; that the fish was kept at the further end of the passageway; that when customers asked for fish he brought it to them, and sometimes people wanted to see the fish before they bought it.

"In passing upon the effect of this evidence as matter of law after a verdict for the plaintiff, it must be borne in mind that the jury had a right to accept any admissions made by the defendant or his witnesses, and reject so much of their testimony as was favorable to themselves (*Jefferds v. Alvard*, 151 Mass., 94, 23 N. E., 734), or find in the very teeth of a denial by the witness an opposite conclusion based upon inferences from other parts of the evidence. *Elliott v. Baker*, 194 Mass., 518, 80 N. E., 450.

"Patrons of shops can not be oblivious to the existence of doors and the possibility that they may be used. They must maintain a reasonable outlook for the condition of the premises and govern themselves accordingly. But in the place where the proprietor displays goods for sale, whether upon permanent counters or in the hands of his servant, customers may reasonably expect, unless warned, to be in safety, not only while making examination or bargain, but also while waiting for the delivery of purchases. Where space for the public is as narrow as in the present case, it can not be said as matter of law that the plaintiff was negligent in failing to observe the door and to apprehend that it was likely to be opened upon her with such force as to throw her forward while in reliance upon the invitation of the defendant and without warning, she was dealing with his agent. It is obvious that the jury could not have given full credit to the testimony of the defendant's servant, Wirtz, for he stated

that he asked the plaintiff to step aside in order that he might enter the refrigerator. This was an express warning, and if, while he was inside, she stepped in the way of the door, she was not in the exercise of common prudence. Having discredited this view, the jury may have found that the plaintiff was standing so near the door that Wirtz must have seen her as he entered the refrigerator, and that knowing the proximity to be such that a step might bring her within the sweep of the door as it swung open, without warning, he opened the door with such force that she was thrown forward two or three steps. It can not be ruled as matter of law that this conduct, in view of Wirtz's knowledge of the plaintiff's presence, may not be found to have been lacking in the requisite regard for the safety of others which it was his duty to observe *Paine v. Armour*, 194 Mass., 334, 80 N. E., 500."

**Landlord and Tenant; Personal Injuries Due to Defective Premises Where Condition of Premises is Misrepresented to Tenant.**

[Central Law Journal.]

The recent case of *Williams v. Goldberg* (N. Y.), 109 N. Y. Supp., 15, is an action to recover damages for physical injuries sustained by the plaintiff in consequence of the willful misrepresentation and deceit of defendant's agent. The trial resulted in a judgment for plaintiff who was a monthly tenant of certain rooms in defendant's premises. After the recommencement of the term and before its expiration, on the occasion of defendant's agent's call for the rent, plaintiff directed the agent's attention to the decrepit and threatening condition of the ceiling in one of the rooms, expressing her apprehension of injury therefrom and her intention to vacate the rooms. The agent assured her that he had had the ceiling examined and tested and that it had been found to be secure. Later, during the same term, the ceiling fell upon the plaintiff, who, relying upon these assurances had remained in the occupancy of the rooms, causing physical injuries to her. Upon the trial it appeared that the ceiling had not been inspected or tested and the agent's representation that it had, were knowingly untrue as a matter of fact, and so the court below found.

The court held that an action for damages for fraud and deceit does not necessarily rest in any actual or contemplated contractual relation of the parties, and depends "upon the fact that an injury has been suffered resulting in damages to the party seeking redress, and that such damages are the legitimate consequence of the fraud." Citing *N. Y. Land Imp. Co. v. Chapman*, 118 N. Y., 288, 294, 23 N. E. Rep., 187, 189. The court says: "Here the plaintiff was induced by means of the misrepresentations to refrain from herself repairing the ceiling, vacating the rooms, or otherwise providing for her protection, in either of which events, she would have been secure from injury. All manner of fraud is abhorrent to the law, and if one person sustains injury through the fraud of another, he will be afforded a proper remedy. True, the plaintiff's injuries were not the immediate result of the defendant's agent's deceit, but of an intervening cause, the fall of the ceiling. They were, however, the indirect result of the deceit, a natural and probable effect of the agent's wrongful conduct, one against which the fraudulent assurances were made, and from which the plain-

tiff expected to escape in her reliance upon such assurances. Her damages, therefore, were proximate, though only consequential to the fraud." Citing *Hale on Damages*, 39; *Sandford v. Handy*, 23 Wend., 263; *Nowack v. Metropolitan St. Ry. Co.*, 166 N. Y., 433, 60 N. E. Rep., 32, 54 L. R. A., 592, 82 Am. St. Rep., 691.

A dissenting opinion by MacLean, J., holding that neither an express warranty nor covenant to repair was shown, and that the danger was as apparent to plaintiff as to defendant's agent, and, further, that if an inspection had been made, as represented by defendant's agent, she would have known of it, and therefore she was bound to know that no inspection had in fact taken place. He holds that the judgment should have been reversed.

This case presents a phase of the law of landlord and tenant which is undoubtedly undergoing a transition. The dissenting opinion presents very correctly the older view. It has been said that the law of landlord and tenant was law for the benefit of the landlord alone. In the dissenting opinion it is held that as there was neither an express warranty nor a covenant to repair, the plaintiff was not entitled to recover, stating that in order to recover she must prove representation, falsity, scienter, deception, and injury, and that the absence of any of these conditions is fatal to a recovery, and further that where misrepresentation is relied on that unless the facts represented are matters peculiarly within the knowledge of the landlord or his agent that a recovery can not be had.

The doctrine laid down by the majority is one that is undoubtedly gaining ground and which is founded upon reason and justice. It is hard to understand why a landlord should be permitted to make false representations, which are relied on by the tenant to his injury, and then escape all liability because no express warranty or covenant to repair can be shown by the tenant.

**Payment; Application; Appropriation by a Creditor; Unsecured Debts; Rights of Sureties.**

In *Cain v. Vogt*, in the Supreme Court of Iowa (June, 1908, 116 N. W., 786), it appeared that V., being indebted to plaintiff, gave him two promissory notes signed by himself and wife, secured by a chattel mortgage, which recited that it was given to secure the payment of the mortgage debt by V., and thereafter, being sued for rent on a farm, he gave plaintiff certain notes for money advanced by him to settle the suit. It did not appear that V.'s wife owned any interest in the chattels covered by the mortgage or that any part of the secured debt was hers. Payments were thereafter made by V., mostly out of the proceeds of the mortgaged chattels, and were applied by plaintiff on the rent notes, which were unsecured. It was held that plaintiff could apply the payments to the unsecured debt, in the absence of a direction to apply it otherwise, and the fact that the payments were made out of the proceeds of the mortgaged chattels did not prevent their application to the debt not secured thereby.

It was further held that the fact that V.'s wife was a surety upon the mortgage debt and not upon the unsecured debt did not prevent plaintiff from applying the payments received to the latter debt, in the absence of any direction to credit them upon the former.

**Judgment; Distinction Between Law of the Case and Res Judicata.**

[Central Law Journal.]

In *Alerding v. Allison* (Ind.), 83 N. E. Rep., 1006, the distinction between law of the case by former decision and res judicata is pointed out as follows: The doctrine of "the law of the case" which, as referring to the decisions of the court in a particular case on a former appeal, is analogous to the doctrine of former adjudication, but much more limited in its application. Under the rule of former adjudication, when a cause has been finally determined by a competent tribunal, all questions of controversy arising in the case must be taken as at rest forever, not only the things that were actually adjudged, but every other matter which the parties might have litigated under the issues formed. *Fischli v. Fischli*, 1 Blackf., 360, 12 Am. Dec., 251; *Gutheil v. Goodrich*, 160 Ind., 92, 95, 68 N. E. Rep., 466. The rule known as "the law of the case," while as conclusive as in former adjudications as to all matters within its scope, can not be invoked, except as to such questions as have been actually considered and determined in the first appeal.

In the application of this rule courts will take cognizance of such points only as affirmatively appear in the last to have been decided in the former appeal. "The rule," as said in a California case, "being one which tends to prevent the judicial consideration of a particular controversy, is not to be extended beyond the exigencies which demand its application." Citing among others the case of *Dodge v. Gaylord*, 53 Ind., 365. Continuing, the court says: In the *Dodge* case, supra, it is said: "It is also settled that the decision of the Supreme Court rendered upon a given state of facts becomes the law of the case as applicable to such facts, and, if the cause be remanded for a new trial, the parties have the right to introduce new evidence and establish a new state of facts, and when this is done the decision of the Supreme Court ceases to be the law of the case, and the court in the trial of such case is not bound by such decision, but should apply the law applicable to the new and changed state of facts." In the *Krug* case, supra, it is said: "The rule 'of the law of the case' thus limited to points considered, and on the first appeal meets our full approval; but we can not agree to the claim of appellee's counsel that 'the law of the case' precludes us from considering and deciding now, on the second appeal of this cause, questions which might have been, but were not, considered and decided as the case was presented on the first appeal. Such claims seem unreasonable, although we are aware supported by many respectable authorities, and even by the language used in some of the reported cases of this court." In the *Wine* case, 158 Ind., it is said on page 391, 63 N. E. Rep., 760: "Only points decided become the law of the case. The record in the appeal to the appellate court, and the opinion pronounced therein, will be regarded as a part of the record in this appeal so far as it will enable the court to ascertain whether the questions now presented were decided by the court in the former appeal. *Westfall v. Wait*, 165 Ind., 353, 359, 73 N. E. Rep., 1089; *Mining Company v. Andrews*, 28 Ind. App., 496, 63 N. E. Rep., 231.

"As relating to the first three propositions, the evidence submitted in this appeal is, in substance, the same as that submitted in the first appeal, and

the law as declared by the appellate court as ruling those points must now be accepted as conclusive. At the outset it should be borne in mind that the 'law of the case' rule has reference to questions of law and not to questions of fact. The term means nothing more or less than the application of that line or rule of decision which courts have from time immemorial applied to like pleadings, or like facts or sets of facts."

**Mistake of Fact; Recovery of Payment.**

In *Lowe v. Wells, Fargo & Co. Express*, in the Supreme Court of Kansas (May, 1908, 96 Pac., 74), it appeared that plaintiff's minor son was in the employ of the express company at Emporia as express messenger. A part of his duty as such was to receive and receipt for packages at the trains, convey them to the express office and take a receipt therefor. He received and receipted for a package containing money at a train, and no further trace of it could be found. The company demanded payment of the amount of money from the boy. His father, believing the son had dropped the package between the train and the express office, and it had thus been lost, paid the amount to the company. It was afterwards learned that the son safely conveyed the package to the company's office and placed it with other packages, but failed to take a receipt therefor; that another employee of the company stole the package, squandered the money, and the company never recovered it. The company was protected by surety bonds as to both employees. After the facts were discovered the father demanded from the company a return of the money paid, which, being refused, he brought this suit. It was held that the money had been paid under a mistake of fact and the plaintiff is entitled to recover. The court said in part:

"That another stole the money after the plaintiff's son had 'safely conveyed it to defendant's office at the depot in Emporia, Kan., and there placed it with other packages,' is not material, except to show the mistake by reason of which the plaintiff paid the money. There is no recital in the statement of facts and there is no presumption that the failure of W. H. Lowe to take receipt for the package induced Davis to steal the package. It is true the rule of the company required W. H. Lowe to take a receipt for each article of express which came into his possession as agent of the defendant when he parted with such possession. His failure to do so was negligence, and for such negligence he was responsible to the company for such damages as could be reasonably anticipated to flow therefrom. We can not say, however, that when he safely deposited the package in the defendant's office with other packages, presumably of like character, that it was reasonably to be anticipated that some other employee of the company would steal the package. If not, there was no consideration for the payment. The theft was the proximate and independent cause of the loss; the negligence was not. The payment was made and received on the belief that W. H. Lowe and not another had lost or appropriated the package.

"The defendant basis its defense practically upon the proposition 'that the money was lost, and lost by reason of the carelessness and neglect of duty on the part of W. H. Lowe.' We do not

think this conclusion follows from the facts. There is much discussion and citation of authorities in the briefs herein as to what must be the nature of the mistake of fact to entitle a party to recover. A succinct definition, which we think correct, is given in 27 Cyc., 809: 'A mistake which takes place when some fact which really exists is unknown, or some fact is supposed to exist which really does not exist; one not caused by the neglect of a legal duty on the part of the person making the mistake; an unconscious ignorance or forgetfulness of a fact past or present material to the contract; a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in an unconscious ignorance or forgetfulness of a fact past or present material to the contract; or belief in the present existence of a thing material to the contract which does not exist or in the past existence of a thing which has not existed.' It is a general rule that money paid under a mistake of fact, where the party seeking to recover was not intentionally ignorant nor grossly negligent in failing to discover the facts, can be recovered. 'Money paid to an express company on a claim for the loss of goods, under the mistaken belief that it had received them for shipment, may be recovered back.' *Hulse Hardware Co. v. American Express Co.*, 65 Ill. App., 596. 'Plaintiff's recovery of a bank note can not be defeated on the principle of voluntary payment, where, her son having accidentally set fire to defendant's property, she transferred the book to the defendant, not willingly, but because of some supposed legal liability on account of the son's act, defendant having no right, or pretense of right, but merely asked plaintiff if she could not make him some recompense for the loss, and asked her to sign a writing transferring the book.' *Bishop v. Corning*, 57 N. Y. Supp., 697, 37 App. Div., 345. 'Money paid under a mistake of fact may be recovered. The fact that the person making the payment has the means of knowledge at hand, and overlooks the same by an inadvertence, is immaterial if the party receiving the same is not entitled to it.' *Girard Trust Co. v. Harrington*, 23 Pa. Super. Ct., 615; see, also, *City of Covington v. Powell*, 59 Ky., 266; *City of Louisville v. Henning*, 64 Ky., 381; *Pearson v. Lord*, 6 Mass., 81; *Lazell v. Miller*, 15 Mass., 207; *Guild v. Baldrige*, 32 Tenn., 295; *Scott v. Ford*, 45 Or., 531, 78 Pac., 742, 80 Pac., 899, 68 L. R. A., 469.

It is contended that the payment in question was a voluntary payment and can not be recovered back, and, among other authorities cited to support this proposition, the following are cited: *Philips v. Board Co. Commrs.* (5 Kan., 412), *Commrs. v. Walker* (8 Kan., 431), *Irwin v. Thomas* (12 Kan., 93), *K. P. Ry. v. Commrs.* (16 Kan., 587), *Sapp v. Commrs.* (20 Kan., 245), *Thimes v. Stumpff* (33 Kan., 53, 60, 5 Pac., 431). We have examined all these cases and find that they are really authorities against the proposition contended for. The decisions in each case are based upon the proposition that the plaintiff with full knowledge of the facts voluntarily made the payment. In the case at bar the plaintiff made every reasonable effort to ascertain what became of the lost package of money without success. The facts which came to his knowledge from investigation evidently led him to believe, and he paid the money believing, that his son had lost the pack-

age by dropping it. This was not true. It was lost by being stolen by another employee from a place in the defendant's office where the plaintiff's son had safely deposited it. This, we think, is a clear mistake of fact."

#### Testimony of Survivors as to Transactions with Decedents.

[New York Law Journal.]

This journal favors the policy embodied in section 829 of the New York Code of Civil Procedure rendering incompetent the evidence of a survivor as to transactions or communications with a decedent. So far as we know Massachusetts is the only American commonwealth that has unqualifiedly abrogated that disqualification. A few of the States permit a survivor to testify, with some special compensating privileges, such as the right to show hearsay declarations of the decedent with regard to the transactions in question. The great majority of the American communities absolutely close the survivor's mouth, and we believe that in the long run that course is the proper one.

It will be of interest to read the decision of the Supreme Judicial Court of Massachusetts in *Howe v. Ripka* (June, 1908, 85 N. E. Rep., 88), in which it was held that the trial judge had properly refused to recognize and validate an alleged gift inter vivos of securities from a brother to his sister, the court having admitted and considered under the Massachusetts rule the testimony of the sister as to transactions with her deceased brother, but having refused to credit it because of her interest. The Supreme Judicial Court of Massachusetts said in part as follows:

"The only question that we have to consider is whether the judge should have found that there was an absolute gift that took effect immediately, as the defendant contends, so that the intestate no longer had any right or interest in the property, or whether his finding on this point was correct.

"The testimony as to the gift came from the defendant alone. A claim such as she makes in this case ought to be examined with very close scrutiny. The effect of a strong interest upon the accuracy of the testimony of witnesses of the most honest and truthful intentions is familiar to everyone who has had experience in the courts. In the effort to recall conversations or other occurrences by the aid of an imperfect memory, the influence of continuous strong feeling is often such as to produce mental pictures with forms distorted or colors changed. Of course, if a witness is not sustained by high moral principle the temptation to prevaricate may be overpowering. For these reasons, long after parties and other interested witnesses were allowed to testify in ordinary cases under our statutes, in a case like the present, where the executor or administrator was a party, or one of the parties to the contract in issue and on trial was dead, the other party was not permitted to testify (Gen. St., 1860, chap. 131, sec. 14). If this trial had occurred prior to the passage of St. 1870, p. 301, chap. 393, the defendant could not have been heard at all as a witness.

"The plaintiff testified that on the first occasion when he had a conversation with the defendant in regard to the bonds she stated 'that her brother had said to her that when he was gone or when he had died they would be hers and she could do as she pleased with them.' She testified that the gift was made to her on November 6, 1905. Her

brother died on March 20, 1906. It appeared that coupons cut from these bonds were deposited by the intestate with Kidder, Peabody & Co., on November 6, November 25, and December 9, 1905, and on January 23 and February 13, 1906. These coupons were collected and the proceeds placed to his credit. Those deposited on each of these dates became due on the first day of the following month. According to the testimony of the defendant, the bonds were removed from the box of the intestate in the vaults of a safe deposit company to another box in the vaults of another safe deposit company. It appeared that this box was taken by her in her own name in the presence of her brother and that he was made her deputy with authority to open it in her absence. After the death of the intestate she was present with the plaintiff and others when the contents of his box in the first safe deposit company were examined, and surprise was expressed by persons interested that no bonds were found. At that time, and at different interviews which she had with the plaintiff about her brother's property, she said nothing to indicate that any bonds had been given to her or that she had knowledge of any bonds that he had owned, and it was not until the administrator told her of the discovery that her brother was depositing coupons from bonds with Kidder, Peabody & Co. up to very nearly the time of his death, and asked her directly about them, that she gave any information on the subject.

"She testified that her brother never gave her any information as to the magnitude of the gift or the number or amount of the bonds, and she never investigated nor had any knowledge on the subject until after his death, except that she knew something about the bonds from having sometimes assisted him in cutting off coupons before the gift was made. She also testified that on the day when the gift was made he said nothing to her about making the gift or removing the bonds until after he had gone to the safe deposit company, whither she accompanied him in a carriage, and that the bonds were brought out and put into the carriage before a word had been spoken in regard to a gift, or to where they were to be put. It also appeared that in February, 1906, he bought other bonds which she said he gave her, and which she put in the box with the others.

"She testified in explanation of these matters, saying that when he gave her the bonds he told her he had cut off future coupons such as he chose, and that she afterwards cut off the coupons that became due in March and gave them to him as a present. She also testified that he told her of his intention to give her the bonds a considerable time before the gift was made.

"There was testimony as to her having caused a will to be made for him, by his direction, a few days before his death, which will was very favorable to her in its provisions, but contained no mention of several others of his heirs at law with whom he was on friendly terms. She testified that she sent for persons to be present as attesting witnesses at the execution of this will, but after their arrival he refused to execute it.

"It is unnecessary to review the evidence at length. After a careful examination of the voluminous testimony, giving due weight to the explanations and circumstances favorable to the defendant's contention, we are brought not only

to the negative conclusion that the decision of the presiding justice does not appear to be wrong, but also to a satisfactory affirmative opinion that the printed evidence shows it to be right."

It is only fair to recognize the illustrative argument from a case like the present one, that it is better to presume in favor of the admission of evidence for what it is worth, trusting to the courts to discredit evidence that is not entitled to reliance. In this case it is true that the witness rendered her story vulnerable by disingenuous conduct and by admissions made upon cross-examination. Nevertheless, the present example does not shake the opinion we have uniformly held that in view of the conceded prevalence of perjury testimony of a survivor as to transactions with a decedent should be excluded. It is quite easy to conceive of cases similar to the present one in which a woman a little more clever than the defendant might have effectually covered her tracks.

#### Carriers; Street Railroads; Parallel Tracks; Negligence.

In *La Barge v. Union Electric Co.*, in the Supreme Court of Iowa (June, 1908, 116 N. W., 816), it appeared that the seats on defendant street railway company's car extended transversely, leaving no passageway down the middle, the passengers entering the space between the seats directly from the footboard on the outside of the car. The sides of the car were not inclosed, except by upright posts erected at the ends of the seats. On the outside of these posts were attached perpendicular handholds for the convenience of passengers in getting on or off. While moving, a rail or guard was let down on the left side of the car, about three feet above the floor, and with the upright posts constituted the only barrier on that side. The space between two cars standing at rest on the tracks was about eleven inches, but the tracks were uneven, the rails being depressed at the joints, thus permitting the cars when in motion to rock and sway, thereby reducing the space between them. Plaintiff's intestate, a passenger, gave the end seat, which he occupied, to a lady, the car being crowded, and stood with his back against the guard rail and post, and on throwing back his head in laughter, so that it extended a few inches beyond the post, was struck by the post or handrail of a car moving rapidly in the opposite direction and fatally injured. It was held that the question of decedent's contributory negligence was for the jury.

#### Recent Important Bankruptcy Decisions.

**Defaulted Corporation Subject to Bankruptcy Act.**—In the case of *Matter of Munger Vehicle Tire Co.*, 19 Am. B. R., 785, by virtue of statutory authority, the governor of New Jersey, by proclamation, repealed the charter of a domestic corporation, because in default in payment of taxes. It was held that the governor's proclamation of default, etc., did not work such a dissolution of the corporation that it could not be adjudicated a bankrupt.

**Claims—Order Rejecting, Eight Months After Allowance—Laches.**—In the case of *Matter of Rome*, 19 Am. B. R., 820, it has been held that where for several weeks prior to and after the entry of an order expunging a claim which had



been allowed nearly eight months before, the creditor was traveling on business in other States, his petition for a review of said order, filed within thirty days after its entry, will not be dismissed for laches.

## Legal Notices.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### FIRST INSERTION.

**Robinson White, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
**Estate of John A. McDonald, Deceased.**  
No. 15,572. Administration Docket 88.

Application having been made herein for letters of administration on said estate, by Georgianna McDonald, it is ordered this 7th day of August, A. D. 1908, that Francis Halsipp, Lizzie Kelley, Jennie Middlekamp, Mary Fellemeier, Alexania McDonald, Lillie McDonald, Rosalie McDonald, Henry S. McDonald, Edward B. McDonald, John F. Walker, Mary Coaply, and Julia Fellemeier, and all others concerned, appear in said court on Tuesday, the 8th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 82-St

**Louis A. Dent, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Cammack, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hands this 31st day of July, 1908. **ELIZABETH MAY CAMMACK**, 3553 Brightwood ave. N. W.; **HENRY H. FLATHER**, care of Riggs Nat'l Bank. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,399. Administration. [Seal.] 82-St

**Thomas P. Woodward, Attorney**  
In the Supreme Court of the District of Columbia.  
**John C. Reeves, Complainant v. Jesse Cowles et al., Defendants.** No. 27,562. Equity Docket 61.  
The object of this suit is to sell lot numbered twenty (20) of Henry Hurt's subdivision of lots numbered fourteen (14) and fifteen (15) of Loomis' subdivision of square numbered sixty-five (65), in the city of Washington, in the District of Columbia, for purposes of partition. On motion of the complainant, it is, this 5th day of August, A. D. 1908, ordered that the defendants, **Jesse Cowles**, **Evidene Starke**, **Archie Wallace**, **Leonard Wallace**, **Beatrice Marshall**, **Martha J. Marshall**, and **Lindsay Marshall, Junior**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. (Signed) **JOB BARNARD, Justice.** A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 82-St

## Legal Notices.

**Walter F. Rogers, Attorney**

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Waverley D. Drinkard**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of August, 1908. **WALTER F. ROGERS**, Loan and Trust Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,075. Admn. [Seal.] 82-St

**Herbert & Micou, Attorneys**

Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Letitia Tyler Semple, Deceased.**  
No. 15,089. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by **Elizabeth Denison Williams** of Washington, D. C., it is ordered this 5th day of August, A. D. 1908, that **Mrs. Albert Goodwin**, **Robinson Tyler**, **Mrs. T. Gardiner Foster**, **Robert Tyler**, **Miss Mattie Tyler**, **James Tyler**, **Miss Martha T. Tyler**, **Mrs. Louis G. Young**, **Robert T. Waller**, **Miss Mary Waller**, **John Tyler Waller**, **Miss Grace Tyson**, **Mrs. Gatewood**, and **Allan Tyson**, and all others concerned, appear in said court on Wednesday, the 9th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 82-St

**Wm. M. Lewin and F. Sprigg Perry, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Daniel Francis Sprigg**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of August, 1908. **FANNIE SPRIGG PERRY**, Hotel Stratford, 14th and Monroe sts. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,480. Administration. [Seal.] 82-St

**J. W. Davidge, Attorney**

In the Supreme Court of the District of Columbia.  
**Florence Fendall, Lizzie McLain v. David Watterston et al.**

No. 27,584. Equity Doc. 61.

The object of this suit is to quiet title by adverse possession to the following land in the city of Washington, District of Columbia, to wit: the east half of lot three (3), in reservation B, a per plat recorded in the office of the surveyor of the District of Columbia. On motion of the complainants it is, this 6th day of August, 1908, ordered that the defendants, **David Watterston**, **Mrs. M. K. Watterston**, **Rebecca Machaner** or **Machauer**, **Roderick Watterston**, **Charles Watterston**, and **Thomas R. Martin**, trustee under the last will and testament of **David A. Watterston**, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. **JOB BARNARD, Justice.** A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 82-St

**Legal Notices.****J. Harry Smith, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.  
**Missouri Blackman, Complainant, v. The Unknown Heirs at Law, Devisees, and Alienees of Richard Sewell, Deceased.** Equity No. 27,598.

The object of this suit is to declare the title to the south 19 feet fronting on 21st street N. W. and running back equal width the depth of original 31, in square 78, in the city of Washington, District of Columbia, to be good of record in complainant, and to perpetually enjoin and restrain the defendants from asserting any title to said real estate. On motion of the complainant, by her solicitor, it is, by the court, this 4th day of August, 1908, ordered that the defendants, the unknown heirs at law, devisees, and alienees of Richard Sewell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause shall be proceeded with as in case of default. This order shall be published twice a month in the months of August, September, and October, 1908, in The Washington Law Reporter and The Washington Times. **JOSEPH BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

aug 7, 14; sept 4, 11; Oct 2, 9

**Sleman & Lerch, Attorneys**

In the Supreme Court of the District of Columbia.  
**Anne Mary M. Kidder et al. v. Marion Cutter Chester and Marion Cutter.** No. 27,921. Equity Doc. 61.

The object of this suit is the divesting of Marion Cutter Chester and Marion Cutter of all title in and to lots thirty-one (31) thirty-two (32) and thirty-three (33) in Charles Dodge's subdivision of square numbered one hundred and seventy-six (176) in the city of Washington, D. C., and for the appointment of trustees to take and hold the trust estate for the benefit of complainants, and for further relief. On motion of the complainants, it is, this 4th day of August, 1908, ordered that the defendants, Marion Cutter Chester and Marion Cutter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. **JOSEPH BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

[Seal] **Wm. A. McKenney, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen F. Tree, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,419. Administration. [Seal.] 82-8t

**James F. Bundy, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

**Estate of Susan Reed, Deceased.**  
 No. 15,363. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with the said will annexed on said estate, to issue to Walker J. Robinson, by Georgia Bland Braxton (a niece of said deceased), it is ordered this 3d day of August, A. D. 1908, that Rebecca Barr and Lucy Harding, and all others concerned, appear in said court on Friday, the 11th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOSEPH BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

[Seal] **Wm. A. McKenney, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

**Legal Notices.**

**Hamilton, Colbert, Yerkes and Hamilton, Attorneys**  
 Supreme Court of the District of Columbia, Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louise Novel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1908. **LEONIDE DELARUE**, 3415 13th st., Brookland, D. C. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,264. Administration. [Seal.] 82-8t

**T. L. Jeffords, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.  
**Estate of Hattie M. Greenfield, Deceased.**  
 No. 15,000. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Ingalls, it is ordered this 31st day of July, A. D. 1908, that Nellie H. Singer and Chester R. Singer, and all others concerned, appear in said court on Friday, the 18th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 82-8t

**Wm. A. McKenney, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Mary J. Riley, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 31st day of July 1908. **AMERICAN SECURITY AND TRUST COMPANY** by Wm. A. McKenney, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,235. Administration. [Seal.] 82-8t

**SECOND INSERTION.**

**William A. Donch, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

**Estate of Johanna Kiesecker, Deceased.**  
 No. 15,335. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by William Kiesecker, it is ordered, this 30th day of July, A. D. 1908, that Ernest C. Kiesecker, and all others concerned, appear in said court on Tuesday, the 1st day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

[Seal] **Wm. A. McKenney, Attorney**  
 Supreme Court of the District of Columbia, Holding Probate Court.

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susan Gangewer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of July, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY, Fred'k Eichelberger, Trust Officer.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,422. Administration. [Seal.] 81-St

**Frank E. Elder, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas D. Yeager, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 20th day of July, 1908. **MARY A. YEAGER, 925 Ost. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,410. Administration. [Seal.] 81-St

**Edward S. Bailey, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Frank E. Ross v. Julia B. Ross.**  
**No. 27,575. Equity Doc. —.**

The object of this suit is to obtain a divorce from bed and board on the ground of desertion. On motion of the complainant, it is, this 24th day of July, 1908, ordered that the defendant, Julia B. Ross, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before [Seal] said day. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 81-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary W. Strong, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. **AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,376. Administration. [Seal.] 81-St

**Smith & Walker, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice, That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marshall D. Gaines, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of July, 1908. **CLARA GAINES, Orange, Va., Box 88.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,415. Administration. [Seal.] 81-St

**Legal Notices.**

[Filed July 20, 1908. J. R. Young, Clerk.]

**W. A. Johnston, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Robert L. Pitcock, Complt., v. Nora F. Pitcock et als.,**  
**Defendants. Equity, No. 27,843.**

**ORDER OF PUBLICATION.**

It appearing to the court that the defendant, Richard Easton, or Eastern, is a nonresident of the District of Columbia, it is, by the court, this 20th day of July, A. D. 1908, on motion of the complainant, by his solicitor, ordered that said Richard Easton, or Eastern, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. The object of this suit is to obtain an absolute divorce in favor of Robert L. Pitcock from his wife, Nora F. Pitcock, on the ground of adultery, the said Richard Easton, or Eastern, being named as co-respondent. **THOS. H. ANDERSON, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 81-St

**Douglass S. Mackall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edgar P. Watkins, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, where and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of July, 1908. **LUTHER S. FRISTOE, by Douglass S. Mackall, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,600. Administration. [Seal.] 81-St

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen D. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. **AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,394. Administration. [Seal.] 81-St

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of West Steever, Deceased.**  
**No. 15,394. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday, the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] **THOS. H. ANDERSON, Justice.** Attest: **James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.** 81-St

**Legal Notices.**

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary R. Steever, Deceased.**

**No. 15,395. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** Attest:  
 James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-St

**Roach & Watkins and Ralph D. Quinter, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Ellen C. Edmonston, Complainant, v. Owen S. Edmonston and Mary Bradley, Defendants.**

**No. 27,860. Equity Doc. —.**

The object of this suit is to obtain a divorce on the ground of adultery. On motion of the complainant, it is this 20th day of July, 1908, ordered that the defendants, Owen S. Edmonston and Mary Bradley, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] **THOS. H. ANDERSON, Justice.** True copy. Test: J. R. Young, Clerk, by Fred C. O'Connell, Asst. Clerk. 31-St

**THIRD INSERTION.**

**Oscar Nauck, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry Jaeger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. **ARMIN JAEGER, 76 Harford Road, Baltimore, Md.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,219. Administration. [Seal.]** 30-St

**Carlisle & Luckett, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In Re Estate of Juliana Walker Gales, Deceased.**  
**No. 15,364. Administration Docket.**

Application having been made herein for probate of the last will and testament and codicils thereto of said deceased, and for letters testamentary on said estate, by John McClellan and Oscar Luckett, it is ordered this 17th day of July, A. D. 1908, that William V. Marmion, Mary Lee Bolbrugge, Juliana Gales Torno, Frederick Wupperman McClellan, Rose Lee Walker McClellan, Josephine Frances Johnston McClellan, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** A true copy. Attest:  
 James Tanner, Register of Wills. 30-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

**W. M. Ellison, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John H. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of July, 1908. **EMMA E. LANE, 1410 Penn. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,406. Administration. [Seal.]** 30-St

**Jas. E. Padgett, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Richard Emmons, Deceased.**

**No. 14,851. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Clara L. P. Emmons, it is ordered this 20th day of July, A. D. 1908, that Howard O. Emmons, John E. Emmons, and Earl Emmons, and all others concerned, appear in said court on Tuesday, the 25th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** Attest:  
 James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

**R. R. Horner, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**

**In the Matter of the Estate of Arthur Simmons, Deceased. Probate No. 15,126.**

Application having been made by Alice Simmons for the probate of the last will and testament of Arthur Simmons, deceased, and for letters testamentary thereon, it is by the court, this 23d day of July, A. D. 1908, ordered that Hannah A. Simmons, and all others concerned appear in said court on or before the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** A true copy. Attest: James Tanner, Register of Wills. 30-St

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Caroline Miller, Deceased.**

**No. 15,387. Administration Docket 38.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by National Savings and Trust Company, it is ordered this 21st day of July, A. D. 1908, that Emma J. Bell, Arthur Williams, John S. Wood, James Michael, Charles Shafer, George McElliot, Rebecca Garner, Harriet Crouse, Lewis Myers, Kate Athey, Elizabeth Fenlon, Mollie Sprague, Katie Buckwalter, Charles F. Boyer, Samuel K. Boyer, Carrie F. Toland, Noble G. Toland, Arthur De Toland, Emory B. Toland, and the unknown heirs at law and next of kin of said Caroline Miller, and all others concerned, appear in said court on Wednesday, the 2d day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** Attest:  
 James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 30-St

**Legal Notices.**

W. C. Martin, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Emily Haines, alias Haynes, Deceased.**  
No. 15,568. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with a copy of the will thereto annexed, on said estate, by Martha Gant, it is ordered this 16th day of July, A. D. 1908, that Henry Jackson, Robert Jackson, and James Jackson, and all others concerned, appear in said court on Tuesday, the 18th day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than

[Seal] thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 80-3t

H. Randall Webb, Attorney  
In the Supreme Court of the District of Columbia.  
**Olivia Scala v. Heirs of George Beall, Unknown.**  
No. 27,890. Equity Doc.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece and parcel of real estate, to wit: Lots numbered forty-five (45) and forty-six (46) and the eastern one (1) foot and (7) inches of lot numbered forty-four (44), or so much of said lot forty-four (44) as was embraced within the original boundaries of lot numbered fifteen (15) in a subdivision of lots numbered fourteen (14) and fifteen (15) in square numbered nine hundred and forty-nine (949) in Washington City, District of Columbia, as per plat recorded in Liber 26 at page 162 in the office of the surveyor for the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months

[Seal] in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

H. Randall Webb, Attorney  
In the Supreme Court of the District of Columbia.  
**Jerome Hurst v. Heirs of George Beall, Unknown.**  
No. 27,889. Equity Doc.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece of real estate, to wit: Lot numbered forty-seven (47) in subdivision of certain lots in square numbered nine hundred and forty-nine (949) in the city of Washington, District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The

[Seal] Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**FOURTH INSERTION.**

[Filed July 13, 1908.]

A. Leftwich Sinclair, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys, Authorized by the Act of Congress, Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company in the District of Columbia.

District Court No. 671.

Notice is hereby given that we, the undersigned, have been designated and appointed by the Supreme Court

**Legal Notices.**

of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress, approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Tuesday the Twenty-second day of September, A. D. 1908, at the United States courthouse (City Hall), in said District, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the real property affected by the changes made in the grades of the following named streets, avenues, and alleys in said District and hearing testimony touching the damages resulting to said property from said changes of grade, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled, "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: South Capitol street from D street to Canal street; Sixth street southwest, between D street and School street; C street southwest, between Sixth street and Seventh street; Virginia avenue southwest, between Sixth street and Seventh street; D street southwest, between Sixth street and Sixth and One-half (½) street; Seventh street southwest, between D street and Maryland avenue; C street southwest, between Seventh street and Eighth street; the alleys in square numbered four hundred and sixty-four (464); Tenth street southwest, between Maryland avenue and C street; Maryland avenue southwest, between Ninth street and Eleventh street, and Fourteenth street southwest, between D street and Water street. All owners of real property damaged by the changes made in the grades of any of said streets, avenues, or alleys will file a petition with us, in this cause, duly signed and sworn to, for an allowance of damages within twelve months after the said twenty-second day of September, A. D. 1908. It is provided in and by the aforesaid act of Congress, approved June 29, 1906, that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine. CHARLES

[Seal] A. BAKER, GEORGE W. MOSS, GEORGE SPRANSTY, Commission Appointed to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 29-6t

W. F. Mattingly and W. C. Clephane, Attorneys

In the Supreme Court of the District of Columbia.  
**Maria G. Dewey, Complainant, v. William B. Todd et al., Defendants.**  
No. 28,880. Equity Doc.

The object of this suit is to obtain a decree authorizing the complainant to pay into court such sum of money, if any, as is properly payable by her, in excess of the aggregate of the balance of the personal estate of Mari-  
anne A. B. Kennedy, deceased, which has already come and may hereafter come into the hands of the executor of her estate, as may be determined by the court necessary to satisfy and pay the legacies bequeathed by the will of said decedent, after deducting from said funds all debts, funeral expenses, and costs of administration; and upon payment by said complainant as aforesaid, that said executor be directed to execute to her a deed in fee to certain real estate known as 715 Market Space, Washington, D. C.; and incidentally for such accounting and orders as may be necessary. On motion of the complainant it is, this 10th day of July, 1908, ordered that the defendant, May Bacon, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week

[Seal] for three successive weeks in The Washington Law Reporter before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. 29-4t

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WASHINGTON, D. C. - - - - - AUGUST 14, 1908

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### Attorneys and the Statute of Limitations.

It is reported that the cause of the recent removal by the President of a United States attorney was that he had refused to pay certain personal debts which had become barred by the Statute of Limitations. In the July number of Bench and Bar, New York, this action of the President, assuming the reason for removal was as reported, is heartily endorsed. Our contemporary says:

No attorney should be so lost to a proper sense of decency and honor as to plead limitations to a personal debt, except under extraordinary circumstances. An attorney guilty of such conduct should be, not only removed from appointive office, but disbarred. But the same rule should not apply to the pleading of the statute for a client. We would think it even an attorney's duty to invoke such a defense in a client's behalf, if the client so desired, nor need an attorney decline to accept a retainer involving such a defense. In other words, we think that attorneys, the sworn officers of the courts, should be held to higher standards of honor and ethics in their private capacities than the laity, and should be turned out of office "for cause" whenever conduct of any sort merits the contempt and condemnation of right-thinking men. The proposed Fifteenth Canon of the Committee on Ethics of the American Bar Association declares that "a lawyer should not do for a client what his honor would forbid him to do for himself." This seems to express such an excellent sentiment that we hesitate to suggest a narrowed construction. But we do not think this should be held to prohibit the in-

terposition for a client of any of the statutory defenses to obligations, such as limitations or usury, which the law, for sound reasons of public policy, sets up. For a lawyer to do the same thing for himself, however, should invoke the discipline of bar associations and of courts.

### Relief Against Foreclosure of Mortgage for Default in Payment of Interest.

In the recent case of *Smith v. Lamb*, decided by the Supreme Court of New York, in special term, and reported in the *New York Law Journal*, the action was brought to foreclose a mortgage for default in the payment of interest within thirty days of a specified interest date. It appeared that the property covered by the mortgage was owned by a bank. The bank suspended payment, and receivers were appointed, at the suit of the attorney-general of the State, on November 28, 1907, at which time no interest was due. While the property was thus temporarily in the custody of the court the interest became due and remained unpaid during the subsequent thirty-day period, whereupon the mortgagees elected to treat the whole mortgage debt as due and payable. The receivers were subsequently discharged, and the bank resumed business, and sought relief against the foreclosure upon payment of the interest and proper costs and disbursements. In granting the relief asked, the court said in part:

We have here a case in which the default was caused not by the negligence of the owner of the land, but by an act of the State, quasi-governmental in its character. Whether the court can relieve an owner of land from the ordinary consequences of such a situation does not seem to have been up for decision heretofore. In all the cases in this State in which relief has been denied in cases of this nature the default has been attributable to some negligence on the part of the party bound to pay the interest. In many cases, however, relief has been granted when the apparent default was procured by such acts of the mortgagee as would render his attempt to take advantage of it as unconscionable. Here, however, the mortgagee is in no way chargeable with any of the circumstances which resulted in the default, as before observed. In the cases above cited the clause in the mortgage is declared not to be a penalty or a forfeiture in its nature, and thus to be outside the general rules of equity on these subjects. Yet the situation here presented is one in which relief should be granted on terms of equality if this court has power so to do. This court, by assuming control of the bank's business and assets, disabled the bank from paying the interest, and thus produced the default. There is no question of actual insolvency in the case. The interference of the court was precautionary in its nature, and was done under the authority of general laws. Its effect was to suspend the power of the bank to discharge its obligations. When the court took charge the bank was not in default. It did not perform at the appointed time because its power to do so was temporarily paralyzed by sovereign authority. *People v. Globe Mutual Insurance Co.*, 91 N. Y., 174. There is nothing in this case to show that the plaintiff will suffer any real loss or disadvantage if the defendant be relieved. I think the court has power to relieve and should do so.



**Supreme Court of the District of Columbia.**

UNITED STATES EX REL. THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY,

v.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

No. 50,790 Law. Decided August 10, 1908.

HEARING on a petition for a writ of mandamus—Writ issued.

Mr. F. D. McKENNEY and Mr. J. S. FLANNERY for the relators.

Mr. E. H. THOMAS for the respondents.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case the relator has filed a petition asking for the writ of mandamus to be issued against the Commissioners of the District of Columbia, to require them to execute and deliver to the relator, or to the Secretary of the Treasury, a certificate to the effect that the passenger station and terminal, in this District, and the connecting lines of railroad, contemplated by the act of February 28, 1903 (32 Statutes at Large, 909), are ready for occupancy. The purpose of this certificate is to enable the relator to receive from the Treasury Department the sum of \$1,500,000 appropriated by the said act, and which is to be paid to the relator, on the giving of such certificate, as the statute states, "as a contribution toward the large expenditures to be made by said company in the relocation and improvement of its line of railroad, and elimination of grade crossings resulting therefrom, as required by said act."

On the filing of this petition a rule to show cause was issued and served on the Commissioners, and they have answered the same. By this answer they admit that the passenger station and terminal, and connecting lines of railroad, contemplated by the said act, are now in use and occupied, but they contend that the said certificate should not be given until all the work contemplated under the said act to be performed by the relator should be fully completed; and they claim that on the line of the said railroad, in the south part of the city of Washington, which they contend is a "connecting line," certain grade crossings have not been eliminated, and a certain substation has not been built, as contemplated by the said act.

The answer admits that the relator has removed its tracks from Sixth street and the Mall, and its western connection with Maryland avenue, and that it has conveyed its passenger station at Sixth and B streets to the United States; and, in fact, admits that the substation to be located at a convenient place north of the Long Bridge, the bridge across New Jersey avenue, the track running to the Navy Yard, and certain sidings leading to certain coal and lumber yards and other business plants, are the only portions of the work which the relator was required to do which have not been done, and which respondents claim should be done, before they can be required to sign the said certificate.

The respondents further contend that they are vested with judicial power by the said act of February 28, 1903, to determine when the passenger station or terminal and connecting lines of railroad contemplated by the said act, are ready for occupancy; and that they have considered the matter, and have determined, as a board, that the said passenger station or terminal, and connecting lines of railroad, are not ready for occupancy; and they therefore claim that it is beyond the power of this court to review their action in a proceeding for mandamus.

They further claim in their said answer that the petitioner has a legal remedy other than by the writ prayed for, and for that reason the mandamus should be refused.

In argument it is stated that the other remedy referred to is the right to bring an action in the Court of Claims to recover the \$1,500,000. Without deciding whether or not such right exists, I am disposed to hold that if it does exist, it is an inadequate remedy. The refusal of the respondents to sign such certificate, if the time has arrived when the relator is entitled to that certificate, is not cured by a suit in that court for money. If the petitioner should be compelled to enter suit in the Court of Claims, obtain a judgment, and then apply to Congress for another appropriation to pay that judgment, it would be imposing upon it a burden not contemplated by Congress, for by this act of February 28, 1903, the appropriation of the money is already made, and the only obstacle in the way of payment by the Government to the relator is the refusal of the Commissioners to sign the certificate, which the statute provides is necessary in the premises, and which they ought in good faith to sign, if the work has progressed far enough to entitle the relator to it.

As to the claim that the respondents are exercising judicial powers in the premises, it seems to me that such contention can not be maintained; and that the only question arising on this record is, whether the station and connecting lines are ready for occupancy. They are ready for occupancy, or they are not. If ready, then the Commissioners would have no right to withhold the certificate, for no discretion seems to be vested in them, but they are simply charged with doing a ministerial act, to wit, signing a certificate as to a certain fact. The fact being established or conceded, the duty to sign the certificate arises at once.

The case has been argued on the petition and answer, and there appears to be no material dispute between the parties as to the facts. The main contention is a difference of opinion as to the proper construction of the act in question. The petitioners' counsel contend that Congress never contemplated that all the work which the railroad was required to do should be done and completed before it became entitled to this contribution toward the great expense of the improvement; while the Commissioners contend that the words "*ready for occupancy*" must be held to mean that all the work contemplated was fully completed, the grade crossings eliminated, and the substation erected, before the "connecting lines" could be said to be ready for occupancy.

The answer to their contention is this, that the work which it is agreed on both sides has not been done can not in any proper sense be said to be located on the "connecting lines." That is, that the

words "connecting lines," considering the whole act together, mean those lines that connect the new station or terminal with the old main lines of the road; and that any work that was to be done on any of the old lines will be required to be performed by the relator, whether the said money is paid or not; and that the right to receive the money does not depend on the doing of that work, and the receipt of the money does not excuse the relator from performing that work, wherever it is required by the act.

In other words, counsel for the petitioner contend that the money sought by this proceeding is only a small portion of the money already expended by the railroad company, and that the actual occupancy of the station and the connecting lines, all now in complete order, was what was contemplated by Congress; and that the old lines can not be properly called "connecting lines," and that therefore the Commissioners have no right to withhold the giving of said certificate, in order to coerce the relator in the performance of some other work. In fact, they contend, it may have been contemplated that this very money that was to be paid to the relator as a contribution toward the expenses of these great improvements was to be used by it in completing this work on its main lines; but whether so or not, that all that the act required to be done in order to entitle it to this payment has been done; and that the withholding of the certificate is an arbitrary act on the part of the Commissioners, and that therefore this court has ample jurisdiction to require the certificate to be signed in order to relieve it from the embarrassment in which the refusal of the respondents have placed it.

In my judgment, the Commissioners are not justified in longer refusing to sign the certificate asked for; and I am therefore disposed to order the peremptory writ of mandamus to be issued, as prayed in the petition.

An electric-light company which places arc lights in a store under a contract with the tenant, reserving the absolute property in and the exclusive care, management, and control of, the same, is held, in *Fish v. Waverly Electric Light & P. Co.*, 189 N. Y., 336, 82 N. E., 150, 13 L. R. A. (N. S.), 226, to owe to an employee in the store the duty of reasonable care as to the manner of attaching such lights to the ceiling, and to be responsible for a personal injury to him from the fall of a light in consequence of the failure to exercise that degree of care.

A merchant who purchases in open market stove polish which is in fact explosive and highly dangerous for use, and sells it for the purpose for which it is intended, is held, in *Clement v. Rommeck*, 149 Mich., 595, 113 N. W., 286, 13 L. R. A. (N. S.), 382, not to be liable, in the absence of negligence on his part, to a consumer who is injured by attempting to make use of it according to directions.

The liability of the owner of a private residence for resulting injury to one who, approaching the house on business after dark, enters a vestibule from which several doors open, and who, after knocking upon one, in response to an invitation to enter, opens a closed door leading to a flight of steps, down which he falls, is denied in *Clark v. Fehlhaber*, 106 Va., 803, 56 S. E., 817, 13 L. R. A. (N. S.), 442.

#### Canons of Professional Ethics Submitted by Special Committee of the American Bar Association.

##### I.

##### PREAMBLE.

In America, where justice reigns only by and through the people under forms of law, it is essential that the system for establishing and dispensing justice not only be developed to a high point of practical efficiency, but so maintained that there shall be absolute confidence on the part of the public in the fairness, the integrity and the impartiality of its administration; otherwise there can be no permanence to our republican institutions. Our profession is necessarily the keystone in the arch of republican government, and the future of the republic, to a great extent, depends upon our maintenance of the shrine of justice pure and unsullied. It can not be so maintained unless the conduct and the motives of the members of our profession, who are the high priests of justice, are what they ought to be.

The high moral duty devolving upon every member of the American bar has been declared by its great leaders in cogent utterances, constituting at once the lofty source and the fitting preamble of this code of professional ethics.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial, as well as the moral courage, which belong commonly to ripper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—George Sharswood.

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wildest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—Ryan, of Wisconsin.

"Law is a deep science; its boundaries, like space, seem to recede as we advance; and though there be as much of certainty in it as in any other science, it is fit we should be modest in our opinions, and ever willing to be further instructed. Its acquisition is more than the labor of a life, and after all can be with none the subject of an unshaken confidence. In the language, then, of a late beautiful writer (Jameson), I am resolved to 'consider my own acquired knowledge but as a torch flung into an abyss, making the darkness visible, and showing me the extent of my own ignorance.'"—David Hoffman.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a

peacemaker the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—Abraham Lincoln.

"Nothing is more to be dreaded than maxims of law and reasons of state blended together by judicial authority. Among all the terrible instruments of arbitrary power, decisions of courts, whetted and guided and impelled by considerations of policy, cut with the keenest edge, and inflict the deepest and most deadly wounds."—James Wilson.

"Justice is the great interest of man on earth."—Daniel Webster.

## II.

### THE CANON OF ETHICS.

No code or set of rules can be framed which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. Duties of Lawyers to Courts and Judicial Officers.—The law enjoins respect for courts and for judicial officers for the sake of the office, and not for the sake of the individual who, for the time being, administers its functions. A bad opinion of the incumbent, however well founded, can not justify withholding from him the deference due the office while he is administering it. The properties of the judicial station limit the ability of judges to defend themselves, and in the discharge of their duties courts and judicial officers always should receive the support and countenance of the bar against unjust criticism and popular clamor.

2. The Selection of Judges.—It is the duty of the bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political, or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office, and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court.—Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending case, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal con-

sideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar.

4. When Counsel for an Indigent Prisoner.—A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. Defending One Whom Advocate Believes to be Guilty.—A lawyer may undertake with propriety the defense of a person accused of a crime, although he knows or believes him guilty, and having undertaken it, he is bound by all fair and honorable means to present such defenses as the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law.

6. Adverse Influences and Conflicting Interests.—It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests in the same suit or transaction, except by express consent of all concerned, given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion.—A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client after frank advice from counsel. A lawyer should decline association as colleague if it is objectionable to the original counsel. If the lawyer first retained is relieved, another may come into the case, but efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unprofessional.

When lawyers jointly associated in a cause can not agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination as to the course to be pursued. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

8. Advising Upon the Merits of a Client's Cause.—A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which at times justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of courts, even though only occasional, admonish lawyers

to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. Negotiations With Opposite Party.—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. Business Dealings with Clients.—Lawyers should avoid becoming either borrowers or creditors of their clients; and they should scrupulously refrain from bargaining about the subject-matter of their litigation.

11. Dealing with Trust Property.—Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with his private property or be used by him.

12. Fixing the Amount of the Fee.—In fixing fees, the lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay can not justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, the following elements should be considered: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency of the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice, and not a mere money-getting trade.

13. Contingent Fees.—Contingent fees may be contracted for, but they lead to many abuses, and should be under the supervision of the court.

14. Suing a Client for a Fee.—Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services;

(1) Hon. James G. Jenkins of the committee dissents from Canon 13, as he is opposed to contingent fees under any circumstances.

and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. How Far a Lawyer May Go in Supporting a Client's Cause.—Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

A lawyer "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand for any client, violation of law or any manner of fraud or chicanery. No lawyer is justified in substituting another's conscience for his own. A lawyer should not do for a client what his sense of honor would forbid him to do for himself.

16. Restraining Clients from Improperities.—A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in wrongdoing to the detriment of the administration of justice, the lawyer should terminate their relation.

17. Ill-Feeling and Personalities Between Advocates.—Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to involve counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncracies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. Treatment of Witnesses and Litigants.—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client can not be made the keeper of the lawyer's conscience in professional matters. He can not demand as of right that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. Appearance of Lawyer as Witness for His Client.—When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court, in behalf of his client. Similarly it is improper for a lawyer to assert in argument his personal belief in his client's innocence or the justice of his cause.

20. **Newspaper Discussion of Pending Litigation.**—Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. **Punctuality and Expedition.**—Lawyers owe it to the courts and to the public, whose business the courts transact, as well as to their clients, to be punctual in attendance, and to be concise and direct in the trial or disposition of their causes. They should try their cases on the merits, and should not resort to any legal technicalities not necessary to establish the merits.

22. **Candor and Fairness.**—The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer in opening his case, to mislead his opponent by concealing or withholding positions upon which he then intends finally to rely; or in argument to assert as a fact that which has not been proved; or knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence which he knows the court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, suitably addressed to the court, remarks or statements intended to influence the jury or by-standers.

These and all kindred practices, appropriately termed "pettifoggery," are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. **Attitude Toward Jury.**—All attempts to curry favor with juries by fawning, flattery, or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. **Right of Lawyer to Control the Incidents of the Trial.**—As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of

the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross-interrogatories, and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. **Taking Technical Advantage of Opposite Counsel; Agreements with Him.**—A lawyer should not ignore known customs or practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of court.

26. **Professional Advocacy Other than Before Courts.**—A lawyer openly and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of the Government, upon the same principles of ethics which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. **Advertising, Direct or Indirect.**—The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This can not be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. **Stirring Up Litigation, Directly or Through Agents.**—It is unprofessional for a lawyer to volunteer advice to bring a law suit, except in rare cases where ties of blood relationship or trust make it his duty to do so. Not only is stirring up strife and litigation unprofessional, but it is disreputable in morals, contrary to public policy and indictable at common law. No one should be permitted to remain in the profession who hunts up defects in titles or other causes of action and informs thereof in order to be employed to bring suit, or who breeds litigation by seeking out those with claims for personal injuries, or

those having any other grounds of action in order to secure them as clients, or who employs agents or runners for like purposes, or who pays or rewards, directly or indirectly, those who bring or influence the bringing of such cases to his office, or who remunerates policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. Upholding the Honor of the Profession.—Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. A lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession, and to improve not only the law, but the administration of justice.

30. Justifiable and Unjustifiable Litigations.—A lawyer must decline to conduct a civil cause or to make a defense when convinced that the purpose is merely to harass or injure the opposite party, or to work oppression and wrong.

He may counsel and maintain only such actions and proceedings as appear to him just. His appearance in court should be deemed equivalent to an assertion, on his honor, that in his opinion his client is justly entitled to some measure of relief refused by his adversary. Upon that measure he may insist, though he disapprove his client's character.

31. Responsibility for Litigation.—No lawyer is obliged to act either as adviser or advocate for any person who may wish to become his client. He has the right to refuse retainers. Every lawyer must decide what business he will accept as counsellor, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He can not escape it by urging as an excuse that he is only following his client's instructions.

32. The Lawyer's Duty in Its Last Analysis.—No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice the lawyer lays aside his robe of office, and in his own person invites and merits stern and just

condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all, a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

### III.

#### OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other States of the Union"—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

"I do solemnly swear:

"I will support the Constitution of the United States and the constitution of the State of —

"I will maintain the respect due to courts of justice and judicial officers;

"I will counsel and maintain only such actions, proceedings and defenses as appear to me legally debatable and just, except the defense of a person charged with a public offense;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God."

We commend this form of oath for adoption by the proper authorities in all the States and Territories.

In submitting the above draft of a Code of Ethics, the special committee in charge of the work makes the following explanation:

1. As directed by the association at the 1907 meeting (vide A. B. A. Reports XXXI, 64), we

(2) Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wisconsin. The oaths administered on admission to the bar in all the other States require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by law as in the States named.



have prepared and herewith transmit to you a draft for the proposed canons of professional ethics, and we very earnestly request your suggestions and criticisms. We ask, however, that if opposed to any of the canons you aid us by accompanying your remarks by a draft of the precise form in which you recommend wording the canons upon which you may comment. Our final report, based upon the suggestions and criticisms received, will be submitted to the association in August, at Seattle, Washington, in accordance with our instructions.

2. We summarize briefly the movement which has culminated in this draft:

At the 1905 meeting of the association held in Rhode Island, the chairman of the executive committee presented a resolution, which was adopted unanimously, providing for a special committee to report upon the "advisability and practicability" of the adoption of a code of professional ethics by the association. Reports XXVIII, 132. At the association's 1906 meeting, held in Minnesota, the committee reported favorably upon both points (id. XXIX, 600-604; reprinted as Appendix A of the committee's 1907 report (id. XXXI, 681-684), and its recommendation, providing for a committee from bench and bar to draft a series of canons of professional ethics "suitable for adoption and promulgation" by the Association, was adopted unanimously. Id. XXIX, 35. In 1907, at the meeting in Maine, your committee submitted a report (id. XXXI, 676-736), containing a compilation of the codes of ethics adopted in different States of the Union, and much other information, including a reprint of the Hoffman Resolutions in regard to professional deportment. The committee in its 1907 report, *inter alia*, recommended that Chief Justice Sharswood's book on Professional Ethics be reprinted as a volume of the A. B. A. Reports, and it has already been issued as Volume XXXII. The committee in 1907 also reported:

"We believe that such canons (i. e., of professional ethics), to become practically effective, should be adopted only after mature and careful deliberation, and much fuller consideration on the part of our membership than is possible at one of our annual meetings.

"We believe that your committee in drafting the code should have the active assistance of every member of the association with thoughts upon the subject, and that the recommendations which your committee may see fit to make should be considered, not only in connection with what has already been done in those States having codes of ethics, but also in the light of what has been said by individuals who have directed their attention particularly to the subject."

The 1907 report of the committee was approved by the association (Reports XXXI, p. 64), and the committee was directed to transmit a copy of the Sharswood reprint and of the committee's 1907 report to each member of the association and to request a careful examination of the documents set forth in the appendix thereto, and the submission of opinions and suggestions in the matter of the proposed canons of ethics; your committee was also directed to send the reprint and report to the secretary of each State Bar Association in the United States with similar requests, and to suggest that the same be referred to such committee as may be appropriate (id., p. 64). These direc-

tions were followed by your committee in its printed letter of 20th November, 1907, to each member of the American Bar Association, and by its typewritten letter of 19th December, 1907, to the secretary of each State Bar Association in the United States. We received in reply many suggestions of value, which, with excerpts from able articles on the subject in some of the professional journals, American and English, were printed in a "Red Book" of 131 pages for the use of your committee and as an aid to it in its deliberations.

3. In the following States there are codes of ethics, more or less complete, which exist as the result either of codification by statutory enactments of some of the "duties" of lawyers, or of the action of bar associations therein in adopting canons of professional ethics: Alabama, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia, and Wisconsin. In addition to these States there are in the following bar association committees, which have been charged within the last year with the duty either of reporting upon or aiding in the work your committee has in hand, to wit: Illinois, Kansas, Massachusetts, Montana, New York, Ohio, Pennsylvania, and Vermont. There are also committees co-operating in a number of the States which already have codes, and your committee is at frequent intervals being advised that State bar association committees are being named to help the movement—a movement which should culminate in an authoritatively declared standard of professional conduct, which will not only serve as a guide to the youthful practitioner, but will place the profession, qua profession, before the public in its true light, and thereby free it from the unmerited public criticism and censure which have at times been bestowed upon it by the unthinking, as a result of the misconduct of the small percentage of unworthy men who steal into its ranks, yet who in no way represent its spirit or morale.

4. The foundation of the draft for canons of ethics, herewith submitted, is the code adopted by the Alabama State Bar Association in 1887, and which, with but slight modifications, has been adopted in eleven other States. The committee in this connection desire to record their appreciation of the help they have received in this work from their fellow member, Hon. Thomas G. Jones,<sup>3</sup> of Alabama, who was the draftsman of the Alabama Code of Ethics, and who attended the three days' session of your committee in Washington, 30th March to 1st April, 1908, and moved the adoption of a number of your committee's modifications of the Alabama code drafted by him more than a score of years ago.

The committee approved the suggestions of Mr. Justice Brewer (reported A. B. A. Reports, Vol. XXXI, pp. 62-63). The first of his two proposals, "the preparation of a body of rules," "few in number, clear and precise in their provisions, so that there can be no excuse for their violation," "to be given operative and binding force by legislation or the action of the highest courts of the States, assuming that those courts have, as doubtless they have in some States, the power to make

(3) Judge Jones desires to be recorded as not concurring in the personal reference to himself.

and enforce such rules," has resulted in the recommended form for oath of admission. The second is embodied in subdivision II.

The annexed draft for the canons represents our best present judgment after a most careful consideration of the subject; but we hope that the committees of the respective State bar associations will aid us with their advice, and that every member of the American bar, whether a member of the American Bar Association or not, will freely and frankly criticize the canons and advise the committee of any point, whether of substance or phraseology, with which he is not in accord, and will also submit draft for any additional canons which he believes should be inserted.

Constitutional Law; Sales in Bulk Statute.

[New York Law Journal.]

The Supreme Court of Illinois has held a sales in bulk statute passed by the legislature of that State unconstitutional on the grounds that it is an invasion of rights of liberty and property without due process of law and that it constitutes class legislation, denying the equal protection of the laws. *Off & Co. v. Morehead*, June, 1908, 85 N. E., 264. The statute in question (Act May 13, 1905; Laws 1905, p. 284) provides that a sale of any portion of a stock of merchandise otherwise than in the ordinary course of trade or in the regular prosecution of the seller's business or a sale of an entire stock of merchandise in gross, will be presumed to be fraudulent as against creditors of the seller unless the seller and purchaser shall at least five days before the sale make a full inventory, and unless the purchaser shall within the same time in good faith make full inquiries of the seller as to the names and residences of his creditors and shall notify them of the proposed sale, etc.

It will be noted that the Illinois statute provides merely that a sale will be presumed to be fraudulent. The reasoning is in accord with that of the prevailing opinion of the New York Court of Appeals in *Wright v. Hart* (182 N. Y., 330). There is a strong conflict of judicial view as to the validity of statutes of this class, and the position taken by the Illinois court of last resort will be of interest as a contribution to the authority ranged upon one side of an important legal controversy. The following is from the opinion:

"*Meadowcroft v. People* (163 Ill., 56, 45 N. E., 303, 35 L. R. A., 176, 54 Am. St. Rep., 447), was a prosecution for embezzlement under the act for the protection of bank depositors, which provided, *inter alia*, that the 'failure, suspension or involuntary liquidation of the banker, broker, banking company or incorporated bank within thirty days from and after the time of receiving such deposit shall be prima facie evidence of an intent to defraud on the part of such banker, broker, or officer of such banking company or incorporated bank.' In that case the constitutionality of the statute was assailed on the ground that it was special legislation in that it established a rule of evidence applicable only to a particular class of persons. That contention was answered by this court, speaking by Mr. Justice Baker, by pointing out that the business of banking is not *juris privati*, but is, like that of an innkeeper or common carrier, affected with the public interest, and therefore subject to public regulation, and the law was

sustained on the ground that there was manifest reason and necessity for protecting the community in their dealings with persons engaged in the banking business that do not exist with respect to their transactions with those employed in 'the ordinary agricultural, manufacturing, merchandising, and mining pursuits.' The only persons affected by this statute are persons who own 'stocks of merchandise,' and persons who may purchase a portion of such stock of merchandise in some manner other than in the ordinary course of business or the entire stock of merchandise in gross. The words 'stock of merchandise' in this statute are used in the common and ordinary acceptance of those terms, and mean the goods or chattels which a merchant holds for sale, and are equivalent to stock in trade,' as ordinarily used and understood among merchants and tradesmen.

The title of this act indicates its purpose to be the prevention of sales of merchandise in fraud of creditors. It can not be seriously contended that a creditor of a merchant occupies a position of such peculiar public concern that the passage of this act can be justified because of the inability of creditors of merchants to take care of themselves upon an equal footing with creditors of persons engaged in other lines of business. There is, furthermore, no reason pointed out, and none suggests itself to us, why sales of stocks of merchandise should be placed under the protection of a special statute imposing onerous restrictions and conditions upon both seller and buyer from which persons dealing in all other classes of property are exempt. This law has no application to a sale by a manufacturer of all his machinery, tools, finished articles and raw material; or by a farmer of all his live stock, farm implements, crops, grown or growing, and household goods; or by a hotel keeper of his entire business and all the property therein; or by a livery or transfer company of all its rolling stock, harness and horses owned and used in the business; or by a publisher of all his presses and printing machinery and appliances; or by a mine owner of all the property owned and used in the mining business; or to a sale by a miller who may sell his business, mill machinery, and the grain and its products on hand. On behalf of these and all others the law indulges the presumption of honesty and fair intentions in making sales, either in or out of the ordinary course of business, with or without an inventory, and in bulk or by parts and parcels. If sales made of the various classes of property above referred to are presumed to be fair and honest, it is difficult to see why a sale of a stock of merchandise under similar conditions should be presumed to be fraudulent and void. There is no such actual, substantial difference between the members of the class of individuals upon whom this statute is intended to operate and the owners of other kinds of property as to warrant the legislature in passing an act applicable only to persons dealing in stocks of merchandise. The act in question is therefore special class legislation, which is prohibited by the constitution of 1870.

Statutes bearing more or less similarity to the one now under consideration have been enacted in a number of other States. The validity of these statutes appears to have been questioned in the courts of last resort in eight States and one Territory. These courts have reached widely different

results. Thus, in *Squire & Co. v. Tellier* (185 Mass., 18, 69 N. E., 312, 102 Am. St. Rep., 322), *Walp v. Moorar* (76 Conn., 515, 57 Atl., 277), *Neas v. Borches* (109 Tenn., 398, 71 S. W., 50, 97 Am. St. Rep., 851), *McDaniels v. Connelly Shoe Co.* (30 Wash., 549, 71 Pac., 37, 60 L. R. A., 947, 94 Am. St. Rep., 889), and *Williams v. Fourth Nat. Bank* (15 Okl., 477, 82 Pac., 496, 2 L. R. A., N. S., 334, 6 A. & E. Ann. Cas., 970), statutes of the same general character as the one here involved have been held constitutional; while in *Block v. Schwartz* (27 Utah, 387, 76 Pac., 22, 65 L. R. A., 308, 101 Am. St. Rep., 971), *McKinster v. Sager* (163 Ind., 871, 72 N. E., 854, 68 L. R. A., 273, 106 Am. St. Rep., 268), *Miller v. Crawford* (70 Ohio St., 207, 71 N. E., 631), and *Wright v. Hart* (182 N. Y., 330, 75 N. E., 404, 2 L. R. A., N. S., 338), the opposite conclusion was reached and the statutes declared unconstitutional. We do not regard the question involved here as one to be determined upon the weight of authority outside of this State. We have so often expressed our views in regard to the clause of our constitution now under consideration that its interpretation is settled by the previous decisions of this court too firmly to be departed from out of regard for opposing views in other States, however highly we may esteem them. Without regard to the question of the weight to be given to the conflicting decisions of other courts upon the question now in hand, we think the reasoning of those courts which have held such statutes unconstitutional on the ground upon which we rest our judgment in this case are more in harmony with the views of this court, as expressed in the numerous cases, than are the reasons which are given by those other courts in which a different result has been reached."

**Accident Insurance; Construction of Benefit Certificate; "Leg or Arm."**

In *Rogers v. Modern Brotherhood of America*, in the Kansas City Court of Appeals, Missouri (June, 1908, 111 S. W., 518), it was held that a policy insuring against an accidental breaking of a "leg or arm" covers fractures of bones of the limbs, whether in the hands or feet or in the upper or central divisions of the limbs, including a fracture of the heel bone (os calcis). The court said:

"Action against a fraternal beneficiary association brought by the holder of a benefit certificate to recover indemnity under the following provision: 'Should said member, while in good standing, accidentally break his leg or arm he shall receive one-tenth the amount his beneficiary would have been entitled to receive in case of the death of said member.' Plaintiff alleges in his petition that he broke his leg accidentally on the 15th day of August, 1906. The proof shows that the only bone fractured was the heel bone (os calcis). A physician introduced as a witness by defendant testified that anatomists define the word 'leg' as that part of one of the supporting limbs which extends from the knee to the ankle. Counsel for plaintiff on cross-examination asked the witness what the word meant 'in common parlance.' Defendant objected to the question on the ground that the common definition of the word was not a legitimate subject about which to elicit expert opinion. The objection was sus-

tained. The case was sent to the jury under the following instructions, the first of which was asked by plaintiff, the second by defendant:

"The court instructs the jury that if you find and believe from the evidence that the plaintiff accidentally broke his leg on or about the 15th day of August, 1906, your verdict should be for plaintiff in the sum of \$200."

"The court instructs the jury that before plaintiff can recover in this action he must prove by the greater weight of the evidence that he accidentally broke his leg, and, unless he has so proven, your verdict should be for defendant."

"Thus instructed the jury returned a verdict for defendant, but afterward the court granted plaintiff a new trial on the grounds that 'the court erred in rejecting evidence as to what constitutes a leg, and the verdict is against the weight of the testimony as to what constitutes a leg.' Defendant appealed."

"The construction of the contract between the parties was a question of law for the court and not an issue of fact for the jury. The definition of the word 'leg' should not be controlled or even influenced by the meaning placed on it by specialists, since the word has a well-defined common meaning. Terms used exclusively by experts may require expert definition, but those referring to matters of common knowledge need not be so defined. Parties in contracting are supposed to use language in its commonly accepted sense, and courts and juries do not require the aid of experts to tell them what such language means. The learned trial judge should not have permitted either party to introduce evidence to define the word, but should have ascertained its meaning from the language of the contract and instructed the jury accordingly. The agreement of defendant was to indemnify plaintiff in case he should 'accidentally break his leg or arm.' Evidently the parties intended to use the words 'leg' and 'arm' in the broadest sense. Medical men generally employ the word 'leg' in its etymological and most restricted meaning of referring to the portion of the limb between the knee and ankle joint, and when they speak of the bones of the leg they refer to the patella (kneecap), the tibia and fibula. It is too absurd for serious consideration to think that in speaking generally of an arm and leg the contracting parties intended to provide indemnity for a fracture of no other bones in the leg than those comprised in the middle section. Lexicographers define 'leg' and 'arm' as follows: 'Leg: A limb or member of an animal used for supporting the body, and in running, climbing, and swimming, especially that part of the limb between the knee and foot.' 'Arm: The limb of the human body which extends from the shoulder to the hand.'—Webster. But, when one thinks of arms and legs as of limbs, it is manifest that hands and feet must be included. The human body has four limbs, two arms and two legs, each divided into three sections, and it takes all three to make a complete limb. The term 'arm's length' refers to the length of the entire limb, including the hand. 'Leg bail,' 'on one's legs,' 'as fast as his legs would carry him,' all refer to the complete limb, and necessarily include the foot. Under the rule which requires us to interpret the certificate most liberally in favor of the holder, we can not avoid the conclusion that, in providing indemnity, should the member 'break his leg or arm,' the

parties intended to cover fractures of bones of the limbs, whether such bones were in the hands or feet, or were in the upper or central divisions of the limbs. A fracture of the heel bone was covered by the certificate, and the court should have so instructed the jury."

#### Testators and Undue Influence.

[London Law Journal.]

The somewhat unsavory case of *Hamilton v. Hamilton*, which occupied the attention of the president of the probate division with a special jury during the whole of last week, has come to an end, with an agreement between the parties based on the finding of the jury of "undue influence" which has robbed the profession of a very interesting discussion as to how far such a verdict is consistent with due execution, with "knowledge and approval," of a will, which the same jury had also found. The remaining importance of the case lies in the luminous discussion of what amounts to undue influence in the learned president's direction to the jury. A century ago, in the leading case of *Huguenin v. Baseley* (1807), it was declared that no general rule could well be laid down on this subject, and that it would be a question for the judge to decide upon the circumstances of each particular case, their being no certain test of "undue influence." But we have got beyond that now, and numerous conflicts have led up to this final summary of the authorities, which lays down that (a) the burden of the charge rests upon the person who makes it; (b) the influence must amount to force, but it need not be physical force, for if a person gains or acquires such a dominion over another as to prevent the exercise of his discretion, that would be inconsistent with a power of free disposition; (c) importunity resulting in a disposition made only for the sake of peace would also be tantamount to force that could not be resisted; (d) the result of the influence must be that a man is made to do what another wants, so that the wish embodied in the document is not his wish but that of someone else. Here we have at length a clear statement of the doctrine and the rules governing its application, and the result in its bearing on future disputes almost justifies the expenditure of judicial time and thought on the litigation which has been in other respects so expensive to the parties.

**Bankruptcy.**—A surety on an injunction bond given in a suit brought to restrain the enforcement of a judgment is held, in *Stull v. Beddeo* (Neb.), 112 N. W., 315, 14 L. R. A. (N. S.), 507, not to be released from liability thereon by the discharge of his principal in bankruptcy.

**Bank—Negligence.**—The measure of damages for the negligence of a bank in attempting to collect a check and in giving notice of dishonor is held, in *Hendrix v. Jefferson County Sav. Bank* (Ala.), 45 So., 136, 14 L. R. A. (N. S.), 686, to be the actual loss sustained, which the plaintiff must allege and prove; and, even under the doctrine of full prima facie liability, it is held that the bank can not be held for the face value of the check when there are assets of the bankrupt bank on which it is drawn, and a 44 per cent dividend has been declared, and the payee is still the owner of the check.

**Accord and Satisfaction.**—Where a debtor remits by mail a sum less than the amount due, but which he in good faith believes to be all that is due to the creditor, the fact that he marks the check upon the margin "In full to date," or, in the account which he renders, describes it as "Check to balance in full," is held, in *Canadian Fish Co. v. McShane* (Neb.), 114 N. W., 594, 14 L. R. A. (N. S.), 443, not to constitute it a payment made in settlement of a disputed claim; and the acceptance of such check by the creditor is held not to be an accord and satisfaction.

#### Legal Notices.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### FIRST INSERTION.

**Fillmore Beall, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of *Jane V. Arnold*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of August, 1908. **GEORGE K. ARNOLD**, 1837 W. ave. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,446. Administration. [Seal.] 33-St

**Darr, Peyser & Curtin, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of *Elizabeth L. Kelley*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of August, 1908. **CHAS. S. LUSK**, 1326 New York ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,488. Administration. [Seal.] 33-St

**Erskine Gordon, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of *Elizabeth Dahle*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1908. **HENRY DAHLE**, 829 5th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,441. Administration. [Seal.] 33-St

## Legal Notices.

E. H. Thomas and Jas. Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

**In re Condemnation of Land in Square 284 to Provide  
a Site for a Building to Relieve Franklin and  
Thompson Public School.** District Court, No. 779.

Upon consideration of the petition of the Commissioners of the District of Columbia, filed in the above entitled cause, and on motion of counsel for the said Commissioners, it is, by the court, this 7th day of August, A. D. 1908, ordered that the clerk of the court issue a citation to Elizabeth C. Seyboldt, otherwise known as Elizabeth C. Duffie, to appear in this court on the 2d day of September, A. D. 1908, at 10 o'clock A. M., to answer the said petition and to show cause why the prayers thereof should not be granted, and why the parcels of land in square 284 in the city of Washington, District of Columbia, more particularly described in the petition filed herein, should not be condemned for the purpose of providing a site for a building to relieve the Franklin and Thompson public school in the District of Columbia. It is further ordered that a copy of said citation be served by the United States marshal for the District of Columbia upon such owners of the land sought to be condemned herein, and such persons interested therein as may be found by the said marshal or his deputies within the District of Columbia; and it is further ordered that all persons having any interest in these proceedings be, and they are hereby, warned and required to appear in this court on or before the said 2d day of September, A. D. 1908, at 10 o'clock A. M., to answer the said petition, and to continue in attendance until the court shall have made its final order ratifying and confirming the award and report of the commissioners to be appointed by the court to appraise the value of the respective interests of all persons interested in the land and premises mentioned and described in the aforesaid petition. It is further ordered that a copy of this order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Post, and The Washington Herald, newspapers published in the said District, before the said 2d day of September, A. D. 1908. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 83-11

[Filed August 10, 1908. J. R. Young, Clerk.]

Jas. H. Taylor, Attorney  
In the Supreme Court of the District of Columbia.  
Alice F. M. Wood et al. v. Joseph L. R. Wood et al.  
No. 7740. Equity Doc. 21.

**ORDER FOR APPEARANCE OF ABSENT DEFENDANT.**  
The object of this suit is proceeding under the pending petition of the trustees, is final accounting and discharge, and it appearing to the satisfaction of the court that Grace Francis Wood, a daughter born to the complainant, Benjamin Wood, since the last proceeding herein, should be made a party to this cause, and it also appearing to the satisfaction of the court that subpoena issued to said Grace Francis Wood has been returned by the marshal "not to be found." On motion of the petitioners, it is, this 10th day of August, 1908, ordered that the defendant, Grace Francis Wood, infant daughter of the complainant, Benjamin Wood, be made a party defendant to this cause, and that she cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 83-8t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Carter Carr, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1908. AMERICAN SECURITY AND TRUST CO., by James F. Hoot, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,404. Administration. [Seal.] 83-8t

## Legal Notices.

Basili D. Boteler, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Dolores Espinosa, Deceased.**  
No. 15,423. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Aelia Epps Everett, it is ordered this 12th day of August, A. D. 1908, that all the unknown heirs at law and next of kin of the said Dolores Espinosa, deceased, and all others concerned, appear in said court on Monday, the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Sleeman & Lerch, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Thomas Dennis, Deceased.**  
No. 15,428. Administration Docket --.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frances E. Dennis, it is ordered this 11th day of August, A. D. 1908, that Anatola B. Dennis, Thomas B. Dennis, and Ida H. B. Dennis Sidell, and all others concerned, appear in said court on Monday, the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Mary E. Gennet, Deceased.**  
No. 15,400. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Isadore Cooley, it is ordered, this 7th day of August, A. D. 1908, that Fannie S. Bruon and James H. Baker, and all others concerned, appear in said court on Tuesday, the 15th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Howard Boyd, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

**In re Estate of Mary Ellen Hinton, Deceased.**  
Probate No. 15,401.

Application having been made herein for probate of the last will and testament, and codicil thereto, of said deceased, and for letters testamentary on said estate, by Sebastian Hinton, it is ordered this 11th day of August, A. D. 1908, that George B. Hinton, Eric B. Hinton, and William Howard Hinton, and all others concerned, appear in said court on Friday, the 18th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 83-8t

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

Thos. Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of George Grice, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of August, 1908. THOMAS WALKER, 506 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,358. Administration. [Seal.] 32-3t

C. S. Hillyer, Solicitor

In the Supreme Court of the District of Columbia.  
Virginia M. Davis, Complainant, v. The Unknown Heirs, Devisees, and Alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, Defendants. No. 27,983. Equity Doc. —.

The object of this suit is to declare complainant's title perfect, by adverse possession, to the following described lands, premises, easements, and appurtenances, in the District of Columbia and city of Washington: Part of original lot numbered seven (7), in square numbered nine hundred and four, contained within the following metes and bounds, viz, beginning for the same at a point distant twenty-four (24) feet four (4) inches north from the southwest corner of said lot and running thence north along the line of Seventh street east, eighteen (18) feet eight (8) inches; thence east, one hundred and nine (109) feet one (1) inch; thence south, eighteen (18) feet eight (8) inches, and thence west, one hundred and nine (109) feet one (1) inch, to the place of beginning. On motion of the complainant, it is, this 7th day of August, 1908, ordered that the defendants, the unknown heirs, devisees, and alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. (Signed) JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. Aug. 14-21, Sept. 11-18, Oct. 9-16. [Seal]

**SECOND INSERTION.**

Louis A. Dent, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Cammack, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 31st day of July, 1908. ELIZABETH MAY CAMMACK, 8563 Brightwood ave. N. W.; HENRY H. FLATHER, care of Riggs Nat'l Bank. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,399. Administration. [Seal.] 32-3t

Wm. M. Lewin and F. Sprigg Perry, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel Francis Sprigg, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 4th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of August, 1908. FANNIE SPRIGG PERRY, Hotel Stratford, 14th and Monroe sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,480. Administration. [Seal.] 32-3t

**Legal Notices.**

Walter F. Rogers, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Waverley D. Drinkard, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of February, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of August, 1908. WALTER F. ROGERS, Loan and Trust Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,075. Admn. [Seal.] 32-3t

Thomas P. Woodward, Attorney

In the Supreme Court of the District of Columbia.  
John C. Reeves, Complainant, v. Jesse Cowles et al., Defendants. No. 27,862. Equity Docket 61.

The object of this suit is to sell lot numbered twenty (20) of Henry Hurt's subdivision of lots numbered fourteen (14) and fifteen (15) of Loomis' subdivision of square numbered sixty-five (65), in the city of Washington, in the District of Columbia, for purposes of partition. On motion of the complainant, it is, this 5th day of August, A. D. 1908, ordered that the defendants, Jesse Cowles, Evidence Starke, Archie Wallace, Leonard Wallace, Beatrice Marshall, Martha J. Marshall, and Lindsay Marshall, Junior, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. (Signed) JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 32-3t

Robinson White, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of John A. McDonald, Deceased.  
No. 15,372. Administration Docket 33.

Application having been made herein for letters of administration on said estate, by Georgianna McDonald, it is ordered this 7th day of August, A. D. 1908, that Francis Halslapp, Lizzie Kelley, Jennie Middlekamp, Mary Fellemeier, Alexania McDonald, Lillie McDonald, Rosalie McDonald, Henry S. McDonald, Edward B. McDonald, John F. Walker, Mary Coaply, and Julia Fellemeier, and all others concerned, appear in said court on Tuesday, the 8th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 32-3t

J. W. Davidge, Attorney

In the Supreme Court of the District of Columbia.  
Florence Fendall, Lizzie McLain v. David Watters-ton et al.

No. 27,884. Equity Doc. 61.

The object of this suit is to quiet title by adverse possession to the following land in the city of Washington, District of Columbia, to wit: the east half of lot three (3), in reservation E. as per plat recorded in the office of the surveyor of the District of Columbia. On motion of the complainants it is, this 6th day of August, 1908, ordered that the defendants, David Watterston, Mrs. M. K. Watterston, Rebecca Machaner or Machauer, Roderrick Watterston, Charles Watterston, and Thomas R. Martin, trustees under the last will and testament of David A. Watterston, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 32-3t



**Legal Notices.****J. Harry Smith, Attorney**

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.  
**Missouri Blackman, Complainant, v. The Unknown Heirs at Law, Devisees, and Allenees of Richard Sewell, Deceased.** Equity No. 27,898.

The object of this suit is to declare the title to the south 19 feet fronting on 21st street N. W. and running back equal width the depth of original lot 21, in square 78, in the city of Washington, District of Columbia, to be good of record in complainant, and to perpetually enjoin and restrain the defendants from asserting any title to said real estate. On motion of the complainant, by her solicitor, it is, by the court, this 4th day of August, 1908, ordered that the defendants, the unknown heirs at law, devisees, and allenees of Richard Sewell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause shall be proceeded with as in case of default. This order shall be published twice a month in the months of August, September, and October, 1908, in The Washington Law Reporter and The Washington Times. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

aug 7, 14; sept 4, 11; Oct 2, 9

**Sleman & Lerch, Attorneys**

In the Supreme Court of the District of Columbia.  
**Anne Mary M. Kidder et al. v. Marion Cutter Chester and Marion Cutter.** No. 27,921. Equity Doc. 61.

The object of this suit is the divesting of Marion Cutter Chester and Marion Cutter of all title in and to lots thirty-one (31) thirty-two (32) and thirty-three (33) in Charles Dodge's subdivision of square numbered one hundred and seventy-six (176) in the city of Washington, D. C., and for the appointment of trustees to take and hold the trust estate for the benefit of complainants, and for further relief. On motion of the complainants, it is, this 4th day of August, 1908, ordered that the defendants, Marion Cutter Chester and Marion Cutter, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in the Washington Law Reporter and The Evening Star before said day. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

Washington Law Reporter and The Evening Star before said day. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia, Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Ellen F. Tree, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1908. **AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,419. Administration. [Seal.]

**James F. Bundy, Attorney**  
**Supreme Court of the District of Columbia, Holding Probate Court.**

**Estate of Susan Reed, Deceased.**  
 No. 15,363. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration with the said will annexed on said estate, to issue to Walker J. Robinson, by Georgia Bland Braxton (a niece of said deceased), it is ordered this 8d day of August, A. D. 1908, that Rebecca Barr and Lucy Harding, and all others concerned, appear in said court on Friday, the 11th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

Washington Law Reporter and The Washington Bee once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

**Legal Notices.**

**Hamilton, Colbert, Yerkes and Hamilton, Attorneys**  
**Supreme Court of the District of Columbia, Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Louise Novel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 31st day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 31st day of July, 1908. **LEONIDE DELARUE, 8415 12th st., Brookland, D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,264. Administration. [Seal.]

**T. L. Jeffords, Attorney**  
**Supreme Court of the District of Columbia, Holding Probate Court.**

**Estate of Hattie M. Greenfield, Deceased.**  
 No. 15,090. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Charles W. Ingalls, it is ordered this 31st day of July, A. D. 1908, that Nellie H. Singer and Chester R. Singer, and all others concerned, appear in said court on Friday, the 18th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **THOS. H. ANDERSON, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia, Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Mary J. Riley, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 24th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 31st day of July, 1908. **AMERICAN SECURITY AND TRUST COMPANY, by Wm. A. McKenney, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 14,235. Administration. [Seal.]

**Herbert & Micou, Attorneys**

**Supreme Court of the District of Columbia, Holding Probate Court.**

**Estate of Letitia Tyler Semple, Deceased.**  
 No. 15,089. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Elizabeth Denison Williams of Washington, D. C., it is ordered this 5th day of August, A. D. 1908, that Mrs. Albert Goodwin, Robinson Tyler, Mrs. T. Gardiner Foster, Robert Tyler, Miss Mattie Tyler, James Tyler, Miss Martha T. Tyler, Mrs. Louis G. Young, Robert T. Waller, Miss Mary Waller, John Tyler Waller, Miss Grace Tyson, Mrs. Gatewood, and Allan Tyson, and all others concerned, appear in said court on Wednesday, the 9th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Times once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

[Seal] **JOB BARNARD, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court.

Justice blanks of every description for sale at this office.

**Legal Notices.****THIRD INSERTION.**

William A. Donch, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Johanna Kiesecker, Deceased.  
No. 15,835. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration *et al.* on said estate, by William Kiesecker, it is ordered, this 30th day of July, A. D. 1908, that Ernest C. Kiesecker, and all others concerned, appear in said court on Tuesday, the 1st day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-8t

[Seal] fore said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-8t

[Filed July 20, 1908. J. R. Young, Clerk.]

W. A. Johnston, Attorney

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Robert L. Pitcock, Compl't., v. Nora F. Pitcock et als.,  
Defendants. Equity. No. 7,843.

**ORDER OF PUBLICATION.**

It appearing to the court that the defendant, Richard Easton, or Eastern, is a nonresident of the District of Columbia, it is, by the court, this 30th day of July, A. D. 1908, on motion of the complainant, by his solicitor, ordered that said Richard Easton, or Eastern, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post. The object of this suit is to obtain an absolute divorce in favor of Robert L. Pitcock from his wife, Nora F. Pitcock, on the ground of adultery, the said Richard Easton, or Eastern, being named as co-respondent. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 81-8t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ellen D. Lane, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,294. Administration. [Seal.] 81-8t

J. W. Glennan, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of West Steever, Deceased.  
No. 15,884. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration *et al.* on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday, the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-8t

[Seal] day. THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 81-8t

**Legal Notices.**

John B. Larnar, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Susan Gangewer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,422. Administration. [Seal.] 81-8t

Frank E. Elder, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Thomas D. Yeager, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of July, 1908. MARY A. YEAGER, 925 O St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,410. Administration. [Seal.] 81-8t

Edward S. Bailey, Attorney  
In the Supreme Court of the District of Columbia.  
Frank E. Ross v. Julia B. Ross.  
No. 27,875. Equity Doc. —.

The object of this suit is to obtain a divorce from bed and board on the ground of desertion. On motion of the complainant, it is, this 24th day of July, 1908, ordered that the defendant, Julia B. Ross, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Fred. C. O'Connell, Asst. Clerk. 81-8t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Mary W. Strong, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of July, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,376. Administration. [Seal.] 81-8t

Smith & Walker, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the State of Virginia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marshall D. Gaines, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of July, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of July, 1908. CLARA GAINES, Orange, Va., Box 88. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,415. Administration. [Seal.] 81-8t

**Legal Notices.**

**Douglass S. Mackall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Edgar P. Watkins, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 17th day of August, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 20th day of July, 1908. LUTHER S. FRISTOE, by Douglass S. Mackall, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,600. Administration. [Seal.] 31-3t

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary R. Steever, Deceased.**  
**No. 15,895. Administration Docket —.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration cum testamento annexo on said estate, by John W. Glennan, it is ordered this 28th day of July, A. D. 1908, that Adele D. Bartley, Mary R. Steever, and all others concerned, appear in said court on Monday the 31st day of August, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 31-3t

**Roach & Watkins and Ralph D. Quinter, Attorneys**  
**In the Supreme Court of the District of Columbia.**  
**Ellen C. Edmonston, Complainant, v. Owen S. Edmonston and Mary Bradley, Defendants.**  
**No. 27,890. Equity Doc. —.**

The object of this suit is to obtain a divorce on the ground of adultery. On motion of the complainant, it is this 20th day of July, 1908, ordered that the defendants, Owen S. Edmonston and Mary Bradley, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] THOS. H. ANDERSON, Justice. True copy. Test: J. R. Young, Clerk, by Fred C. O'Connell, Asst. Clerk. 31-3t

**FOURTH INSERTION.**

**H. Randall Webb, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Jerome Hurst v. Heirs of George Beall, Unknown.**  
**No. 27,889. Equity Doc. —.**

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece of real estate, to wit: Lot numbered forty-seven (47) in subdivision of certain lots in square numbered nine hundred and forty-nine (949) in the city of Washington, District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter before said day.

[Seal] WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**Legal Notices.**

**H. Randall Webb, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Olivia Scala v. Heirs of George Beall, Unknown.**  
**No. 27,890. Equity Doc. —.**

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece and parcel of real estate, to wit: Lots numbered forty-five (45) and forty-six (46) and the eastern one (1) foot and (7) inches of lot numbered forty-four (44), or so much of said lot forty-four (44) as was embraced within the original boundaries of lot numbered fifteen (15) in a subdivision of lots numbered fourteen (14) and fifteen (15) in square numbered nine hundred and forty-nine (949) in Washington City, District of Columbia, as per plat recorded in liber 26 at page 162 in the office of the surveyor for the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter before said day.

[Seal] WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**FIFTH INSERTION.**

[Filed July 13, 1908.]

**A. Leftwich Sinclair, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court of the United States for the District of Columbia.**

**In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grade of Streets, Avenues, and Alleys, Authorized by the Act of Congress, Approved February 12, 1901, Relative to the Elimination of Grade Crossings on the Line of the Baltimore and Potomac Railroad Company in the District of Columbia.**  
**District Court No. 671.**

Notice is hereby given that we, the undersigned, have been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise the damages resulting to adjacent property from changes of the grades of streets, avenues, and alleys authorized by the act of Congress, approved February 12, 1901, relative to the elimination of grade crossings on the line of the Baltimore and Potomac Railroad Company in the District of Columbia, will meet at 10.30 o'clock A. M., on Tuesday the Twenty-second day of September, A. D. 1908, at the United States courthouse (City Hall), in said District, in a room to be assigned us by the United States marshal for said District, for the purpose of viewing the real property affected by the changes made in the grades of the following named streets, avenues, and alleys in said District and hearing testimony touching the damages resulting to said property from said changes of grade, pursuant to the terms and provisions of an act of Congress approved June 29, 1906, entitled, "An act to provide for payment of damages on account of changes of grade due to the elimination of grade crossings on the line of the Philadelphia, Baltimore and Washington Railroad Company," to wit: South Capitol street from D street to Canal street; Sixth street southwest, between D street and School street; C street southwest, between Sixth street and Seventh street; Virginia avenue southwest, between Sixth street and Seventh street; D street southwest, between Sixth street and Sixth and One-half (6½) street; Seventh street southwest, between D street and Maryland avenue; C street southwest, between Seventh street and Eighth street; the alleys in square numbered four hundred and sixty-four (464); Tenth street southwest, between Maryland avenue and C street; Maryland avenue southwest, between Ninth street and Eleventh street, and Fourteenth street southwest, between D street and Water street. All owners of real property damaged by the changes made in the grades of any of said streets, avenues, or alleys will file a petition with us, in this cause, duly signed and sworn to, for an allowance of damages within twelve months after the said twenty-second day of September, A. D. 1908. It is provided in and by the aforesaid act of Congress, approved June 29, 1906, that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine.

[Seal] A. BAKER, GEORGE W. MOSS, GEORGE SPRANSY, Commission Appointed to Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 29-3t

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - AUGUST 21, 1908

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### Apartment House; Failure to Furnish Heat a Constructive Eviction.

In the case of *Jackson v. Paterno*, 108 N. Y. Supp., 1073, it appeared that the plaintiff leased an apartment from the defendant. There was no stipulation in the lease as to heat, but all the heating apparatus was in control of the landlord. The Supreme Court of New York held that a covenant for quiet enjoyment would be implied, and that it would be construed as including an agreement on the part of the landlord to furnish heat. It was also said that failure of the landlord to furnish heat under such circumstances would constitute a constructive eviction, if the tenant elected to so treat it and moved out of the apartment; but that no eviction could be claimed where the tenant remained in occupancy.

### Bankruptcy; Transfer by Partner of Individual Property.

A transfer of property by an individual member of a firm, although with intent to defraud individual and firm creditors, is not an act of bankruptcy on the part of a partnership which will sustain a petition in bankruptcy against it. In so holding, the United States District Court for the northern district of Georgia (*In re Stovall Grocery Co.*, 161 Fed., 882), said in part:

"It will be perceived that the act of bankruptcy alleged here is the transfer by an individual member of a firm of property with intent to defraud

individual creditors and firm creditors. That is not an act of bankruptcy on the part of the firm. The partnership entity must act, and what is relied upon must be its act. This question was considered and disposed of properly, I think, by Judge Archbald in *Hartman v. John Peters & Co.* (D. C.), 146 Fed., 82. A case recited and relied upon is *In re Redmond*, 9 N. B. R., 408, Fed. Cas. No. 11,632. The substance of what Judge Archbald held can be gathered from the headnote as follows: 'A conveyance by a partner of his individual property, although with intent to prefer a firm creditor, does not constitute an act of bankruptcy by the firm, and will not sustain proceedings in bankruptcy against the partnership.'"

### Measure of Damages for Wrongful Conversion of Goods.

In *Seaboard Air Line Railway Company v. Phillips*, recently decided by the Court of Appeals of Maryland and reported in the *Daily Record*, the action was against the appellant for the alleged conversion of two cases of clothing shipped by the appellee. The court held that after a conversion of goods has taken place, neither an offer to return nor an actual return of the converted goods will afford a good defense to an action of trover. If, however, the goods have been returned to and received by the plaintiff, that fact may be shown by evidence in mitigation of damages; and if returned speedily and in as good condition as when taken, the damages will be merely nominal. The measure of damages to be applied in an action of trover is the value of the goods at the time of conversion with interest to the date of the verdict. If the defendant desires to show a return of the goods in mitigation of damages, he must identify the goods and prove the unimpaired condition of the articles. The question of what is a reasonable time for the return of the goods is one for the jury to determine. Where there is evidence of circumstances calling for a mitigation of damages, the instructions to the jury should call their attention to such evidence and direct that due consideration be given it.

### Liability for Injuries from Unguarded Excavation.

In *Martin v. Louisville and J. Bridge Company*, 84 N. E., 360, recovery was sought for injuries received by falling into an unguarded excavation, across a path which had been habitually used by the public for a considerable time prior thereto. In denying a recovery, the Appellate Court of Indiana maintains the doctrine that an owner of property is under a duty to protect any one coming there by invitation, but that mere passive acquiescence in the use of lands by others is not sufficient to make one liable for injuries received thereon.

**Accident Insurance; Construction of Policy.**

In *Houlihan v. Preferred Accident Insurance Company*, decided by the appellate division of the Supreme Court of New York, and reported in the *New York Law Journal*, the action was upon a policy of accident insurance. The policy contained a clause for indemnity for death caused by "burning of a building," and this was construed to cover death caused by the burning of the contents of a bedroom. The court said:

The defendant issued its policy entitled "The Advance \$10,000 Combination Accident Policy, No. X14,208," to James J. Houlihan, the plaintiff, called in said policy the insured. The beneficiary's name was Mrs. J. B. Manning, a sister of the plaintiff, of the age of 50 years. The policy provided that it would insure the insured against disability or death resulting directly or independently of any and all other causes from bodily injury effected solely through external, violent, and accidental means. Part X, under which the plaintiff claims, is entitled "Beneficiary Insurance." "Provided, always, . . . this policy shall, in consideration of the premium, also insure . . . the person so named as beneficiary against the effect of external, violent, and accidental injury . . . 3, if caused by the burning of a building while the said person is therein, to wit, if such injury so sustained shall be independently of all other causes and within ninety days of such accident result in any one of the following losses . . . for loss of life, the death benefit shall be paid to the insured. For loss of life, \$7,500."

It is conceded that Mrs. Manning died as the result of a fire which occurred in the room which she was occupying in the building known as No. 253 West Forty-fourth, street, in the city of New York, and that the proper proofs under the terms of the policy were duly presented. The sole contention is that the death was not caused by the burning of a building while the said person was therein.

The evidence establishes that a fire occurred in the room in the building which Mrs. Manning occupied; that the bed clothes and mattresses of the bed upon which she slept were burned; that her night clothes were burned from her; her clothes hanging in the room were burned; that the door was blistered; that the matting and rugs were covered with soot and water; that the room was filled with smoke; that the fire therein was seen from the basement; that it required a number of pitchers of water to put out the flames, and as a result two days thereafter Mrs. Manning died.

The defendant asked for a direction of the verdict upon the ground that the plaintiff had failed to prove that there was a burning of the building within the meaning of the policy, and the motion having been granted, plaintiff appeals.

This policy purported to insure against injury resulting from accident. Its very title is "Advance \$10,000 Combination Accident Policy." It insured against external, violent and accidental injury, if caused by the disablement or wrecking of a railway passenger car; 2, if caused by the wrecking or foundering of a steam vessel; 3, if caused by the burning of a building while the said person is therein. "No rule in the interpretation of a policy is more fully established or more imperative and

controlling than that which declares that in all cases it must be liberally construed in favor of the insured so as not to defeat, without a plain necessity, his claim to the indemnity which in making the insurance it was his object to secure. When the words are without violence susceptible of two interpretations, that which will sustain his claim and cover the loss must in preference be adopted." May on Insurance, sec. 175, quoted with approval in *Rickerson v. Hartford Fire Insurance Co.*, 149 N. Y., 307.

In *Marshall v. Com. Travelers' Mut. Assn.* (170 N. Y., 434), the court said: "If, however, there is any doubt or uncertainty as to the meaning of this policy, it must be resolved in favor of the plaintiff upon the well recognized ground that it was the defendant who prepared it, and if any doubt exists as to the meaning of the terms employed, the defendant is responsible for it, as the language was wholly its own."

These few citations illustrate the uniform attitude of the court in dealing with policies of insurance. It is to obtain from the language thereof the fair and reasonable intent of the parties, and, if the language be ambiguous, to resolve the doubt in favor of the insured. What this policy means is to insure against accident caused by fire in a building. The room was on fire—that is, various articles were on fire in the room, and the room was in a building. It can not be that a building must be entirely burned down in order to enable an insured to recover. It must be that what was attempted to be guarded against was injury to the insured resulting from fire while in a building.

In *Northrup v. Ry. Passenger Assur. Co.* (43 N. Y., 516), the defendant by the terms of its policy agreed to pay the assured or her legal representatives the sum of \$5,000 in the event of her death from personal injury when caused by any accident when traveling by private or public conveyances provided for the transportation of passengers in the United States. Mrs. Northrup started from her residence in Rathbone, Steuben County, to visit friends in Madison County. The party traveled in the ordinary manner and by a usual route, on the Erie Railway to Watkins, at the head of Seneca Lake, and there took a steamboat to Geneva, where they arrived in the evening. The station of the New York Central Railroad at Geneva was about seventy rods distant from the steamboat landing, and persons arriving by steamer generally pass from the wharf through the streets of Geneva to the railroad station on foot. She started with her friends to walk, and while in the usual route slipped and fell on the sidewalk, and in the fall the back of her head came in contact with the frozen snow and earth, and she sustained serious injuries thereby, from which she died.

Grover, J., said: "It must be conceded that the injury received by the plaintiff's intestate does not come within the strict literal words of the contract of assurance. . . . The policy must be construed so as to carry into effect the intention of the parties so far as such intention can be determined from the language used, construed in the light of well known extrinsic facts, which must be presumed to have been known to the contracting parties at the time of making the contract, and in reference to which it was entered into. . . . Can it be said that a passenger is not traveling

within the meaning of this contract by public conveyance while passing from one train to go on board another in the actual prosecution of his journey? Or, for further illustration, can this be said of a passenger from New York to Dunkirk by the Erie, while going from the ferryboat at Jersey City to get on board of the train at that place? I think that such passenger, within the meaning of this contract, and also within the fair construction of the language, is a traveler by public conveyance all the way from New York to Dunkirk, although he may walk a short distance from the ferryboat to the train at Jersey City, or from one train to another, when such changes are made at intermediate stations. An injury received while so necessarily walking in the actual prosecution of the journey is received while traveling by public conveyance within the meaning of the policy, as such walking is the actual and necessary accompaniment of such travel. . . . It follows that the judgment appealed from must be reversed."

If walking 70 rods upon the sidewalk of a village street is to be construed as traveling in a public conveyance for the transportation of passengers, it would seem to follow that a death caused by the burning of the contents of a room in a building may fairly be construed to be caused by the burning of a building.

Death by accidental fire in a building was the crucial test of the defendant's liability, not whether more or less of the building itself was actually consumed.

The judgment appealed from should be reversed and a new trial ordered, with costs to the appellant to abide the event.

**Libel; Privileged Communications; Legal Proceedings; Meeting of Private Corporation.**

In *Kimball v. Post Pub. Co.*, in the Supreme Judicial Court of Massachusetts, Suffolk (June, 1908, 85 N. E., 103), it was held that where a bill had been presented to the court, and the court had acted upon it so far as to make a special order that defendants therein should appear and show cause why they should not be enjoined, this act of the court was a judicial proceeding and a subject for a privileged report, although the cause had not yet been finished.

It was, however, decided that the publication of defamatory statements in reporting the meeting of a private corporation, invested with no privileges and owing no special duties to the public, such meeting being for the stockholders alone and for purposes with which the public was in no way concerned, is not privileged.

It was further held that where defamatory statements were published in reporting a meeting of a private corporation, it is no defense that a bill in equity had been filed making the same charges as those contained in the publication. The court said in part:

"It is stated by some authorities that by the common law of England reports of judicial and parliamentary proceedings alone were privileged. While it is said by Shaw, C. J., in *Barrows v. Bell* (7 Gray, 301, 68 Am. Dec., 479), that this statement, unqualified, is too broad, still subsequent decisions seem to show clearly that in England the principle of privilege is confined to reports of judicial or quasi judicial bodies. No privilege

was attached to the report of other public unofficial meetings. Hence, if in such a case a report containing any defamatory statement of fact was printed in a newspaper the proprietor's only defense was that the statement was true. *Purcell v. Sowler*, 1 C. P. D., 781, 2 C. P. D., 215; see, also, *Odgers, Libel & Slander*, 4th ed., Append. B., and the authorities therein cited. Since the decision in this last case the law has been somewhat modified so far as respects official and other public meetings. But these statutes have been somewhat strictly construed, and even now a fair report is not always safe. *Ponsford v. Financial Times*, 16 T. L. R., 248.

"The subject was quite freely discussed by Shaw, C. J., in *Barrows v. Bell* (ubi supra), and the following language was used (7 Gray, 313): 'Whatever may be the rule as adopted and practiced on in England, we think that a somewhat larger liberty may be claimed in this country and in this commonwealth, both for the proceedings before all public bodies and for the publication of those proceedings for the necessary information of the people. So many municipal, parochial and other public corporations, and so many large voluntary associations formed for almost every lawful purpose of benevolence, business or interest, are constantly holding meetings, in their nature public and so usual is it that their proceedings are published for general use and information that the law, to adapt itself to this necessary condition of society, must of necessity admit of these public proceedings, and a just and proper publication of them, as far as it can be done consistently with private rights. This view of the law of libel in Massachusetts is recognized, and to some extent sanctioned, by the case of *Com. v. Clap* (4 Mass., 163, 3 Am. Dec., 212), and many other cases.' And it was held that the publication by a member of the Massachusetts Medical Society of a true account of the proceedings of that society in the expulsion of another member for a cause within its jurisdiction and of the result of certain suits subsequently brought by him against the society and its members on account of such expulsion, is privileged.

"The above language of the court, however liberal its construction, is not to be understood as applying to strictly private meetings. It applies at the most only to meetings public in their nature or where the proceedings concern the public. In that case it was said that the charter of the Massachusetts Medical Society 'invested the society, their members and licentiates with large powers and privileges, in regulating the important public interest of the practice of medicine and surgery, enabled them to prescribe a course of studies, to examine candidates in regard to their qualifications for practice, and give letters testimonial to those who might be found duly qualified.' It was also stated that it appeared by the acts incorporating this society that it was regarded by the legislature 'as a public institution, by the action of which the public would be deeply affected in one of its important public interests, the health of the people.' It was further said that the proceedings of which the report was made 'might be rightly characterized, as in the case of *Farnsworth v. Storrs* (5 Cush., 412), as quasi judicial.' And it was upon the latter ground that the communication was adjudged to be privileged.

"The case before us is entirely different. The



meeting was simply that of a private corporation invested with no privileges and owing no special duties to the public. It was an ordinary business meeting. Whether any member was in fraudulent possession of stock, or had mismanaged the affairs of the corporation, or whether the plaintiffs were unfit to continue as officers, or the corporation had been made bankrupt, were matters with which the public were in no way concerned. The meeting was for the stockholders alone. Only they or their duly constituted agents were entitled to be present. The meeting was neither public nor for a public purpose. As well might it be said that a private conference between the members of a partnership on partnership matters was a public meeting. For the purposes of the meeting it might have been necessary for charges to be made by one stockholder against another stockholder or an officer, and that the charges should be discussed and their truth or falsity determined; and so far the actors were well within the privilege. They had a duty to perform in a matter in which all were interested. But for obvious reasons hereinbefore stated the mantle of protection can not cover him who, having no interest, repeats the defamatory words to others also without interest. And in this matter the conductor of a newspaper stands no better than any other person. As was said in *Sheckell v. Jackson* (10 Cush., 25, 26, 27), in reply to a contention that conductors of the public press are entitled to peculiar indulgence and have especial rights and privileges, 'the law recognizes no such peculiar rights, privileges or claims to indulgence. They have no rights but such as are common to all. They have just the same rights that the rest of the community have, and no more.' These words, although spoken more than half a century ago, state the law as it exists today, except so far as it has been modified by statute, and there has been no statute material to the question before us. The result is that the articles were not privileged so far as they reported the proceeding of the corporation.

"It is argued by the defendants that inasmuch as the charge in the bill in equity was the same as that made at the meeting, namely, that the majority of the stock was in the fraudulent possession of the plaintiffs, it will be impossible for the plaintiffs to contend that any alleged damage was suffered from the one rather than from the other, and therefore if one report is privileged the action can not be maintained. This is untenable. Even if the charge in substance is the same, it is evident that a charge made in a bill in equity filed in court may not be regarded as so serious a matter as a charge made by one's business associates in a business meeting. The difficulty of separating the damages gives no immunity to the defendants."

**Charities.**—A will which gives property to testator's wife on condition that the balance after certain dispositions "will be given to advance the cause of religion and promote the cause of charity in such manner as my . . . wife may think will be most conducive to the carrying out of my wishes" is held, in *Hadley v. Forsee*, 203 Mo., 418, 101 S. W., 59, 14 L. R. A. (N. S.), 49, to create no trust for a charitable use which equity can enforce. With this case is an elaborate note on the question of enforcement of general bequest for charity or religion.

#### Good Will of Business; Unfair Competition.

[New York Law Journal.]

In *George G. Fox Co. v. Hathaway*, in the Supreme Judicial Court of Massachusetts, Suffolk (May, 1908, 85 N. E., 417), it appeared that plaintiff manufactured and sold bread in loaves of a size, shape, color, and condition of surface that gave them a peculiar visual appearance, recognized by customers in connection with the name as indicating the place of manufacture and the quality of the bread. Defendants began to manufacture and sell bread in loaves of the same size, shape, color, and general appearance. Defendants had no occasion to use the combination, and did not carefully distinguish their product from that of plaintiff. Defendants put a paper band on each loaf, which had no such connection with the loaf that it would be likely to go with it from the retailer to the last purchaser, so as to distinguish it as defendants' bread, unless the retailer was careful to preserve it. It was held that the natural effect of defendants' practice being to deceive the public, defendants were guilty of unfair competition, and plaintiff was entitled to relief. The court said in part:

"The principal contention of the defendants is that the use by the plaintiff of this combination of size, shape, color, and condition of the surface, to produce a general visual appearance for its loaf of bread, made in part of malt and milk, gives it no rights, or at least, gives it no rights against one who uses only this combination, without using the same or a similar name. It also contends that, if such a combination calls for any precautions against deception, the defendants did all that they were called upon to do for that purpose.

"In the first place it appears that the oval shape adopted by the plaintiff was uncommon, although not entirely novel, and that it was uneconomical, and less convenient and satisfactory generally for the cutting of slices for all kinds of uses than the shapes generally adopted. There was nothing to show that the defendants' business interests required the combination of this shape with the same size, color, and general visual appearance that had become associated with the plaintiff's trade in this Creamalt bread.

"The plaintiff had no exclusive right in any one of the features of the combination, and if the defendants had required the use of this combination for the successful prosecution of their business, they would have had a right to use it by taking such precautions as would prevent deception of the public and interference with the plaintiff's good will. But the evidence shows that the defendants had no occasion to use this combination, and, therefore, they were not justified in producing an imitation of the plaintiff's loaves, the natural effect of which would be to deprive it of a part of its trade through a deception of the public. There are numberless shapes and sizes in which loaves of bread may be produced, and various peculiarities of appearance in color and condition of surface. These that the defendants had adopted had been combined to distinguish the plaintiff's Creamalt bread, and it was the duty of other manufacturers to recognize this fact. Not, indeed, to the abandonment of their right to do what was reasonably necessary to success in the management of their own business; but to the extent of so conducting their business as not unreasonably

and unnecessarily to interfere with the plaintiff's business through deception of the public.

"But even if the defendants might have manufactured and sold loaves of this general visual appearance by carefully distinguishing their products from those of the plaintiff, they did not so distinguish them. It is to be noticed that the question is not whether dealers are liable to be deceived in buying from the manufacturer or the wholesaler, but whether the user is liable to be misled in buying from the retailer. The plaintiff's loaves are distinguished by their general appearance and a small paper label containing the words, 'Fox's Creamalt,' on the top of each loaf. The defendants made their loaves of the same general appearance, and put a broad paper band upon each loaf, marked:

'Hathaway's Log Cabin Bread.'

'Finest Flavor, Malted.'

"This brand had no such connection with the loaf that it would be likely to go with it from the retailer to the last purchaser unless the retailer was careful to preserve it. If a retailer had any inclination to palm off a spurious product upon a consumer, the loose paper would have no tendency to prevent him. The defendants also had the initials 'C. F. H.' stamped in the bottom of their tins in which the loaves were baked. But it seems that this would not make such an impression upon the bottom of the loaf as to attract the attention of the average buyer or to convey to him any meaning.

"We are of opinion that the defendants unnecessarily, with no apparent reason except to take advantage of the reputation built up by the plaintiff, produced and put upon the market an imitation of its loaves, adapted to use in deceiving that part of the public who had only a general knowledge and recollection of that which had been recommended to them or which they had been accustomed to buy. The principles which are stated at length in *George G. Fox Co. v. Glynn et al.* (ubi supra), are applicable to the present case. The differences in the details of the defendants' imitation are not enough to call for a difference in the conclusion to be reached.

"The case of *Flagg Mfg. Co. v. Holway* (178 Mass., 83, 59 N. E., 667), relied on by the defendants, is materially different from the one at bar. In that case it was assumed in the opinion, upon findings of the master, that the form of zither that the plaintiff made which the defendant imitated and which was not patented had in it certain elements of value for use and for sale which were peculiar to that form. If, quite apart from the plaintiff's good will, belonging to him as a particular manufacturer, this form of instrument was peculiarly valuable, the defendant had a right to make others like it. The only right of the plaintiff was to have the defendants' goods so marked as to indicate unmistakably that they were the defendants' and not the plaintiff's goods. Such marking, so made that persons observing as particularly as they would be likely to observe in buying a musical instrument, could easily be put upon the instruments.

"In the present case there are no intrinsic advantages in the combination which produces this general visual appearance, and there are some disadvantages in it. A very different general appearance will be just as advantageous to the defend-

ants, unless they wish by deceit to get away the plaintiff's customers.

"Moreover, it is not so easy to mark loaves of bread of the same size, shape, and color in such a way that they will readily be distinguished from one another by purchasers generally, as it is so to mark musical instruments. The fundamental question in every such case is: How can the rights and interests of both parties be protected most completely and equitably?"

#### Master and Servant; Injuries to Servant; Assumption of Risk.

In *Lynch v. Saginaw Valley Traction Co.*, in the Supreme Court of Michigan (June, 1908, 116 N. W., 983), it was held that in an action by a lineman against a street railway company for injuries from the falling of a decayed trolley pole, evidence that it was the universal custom of such companies to omit inspection other than that made by the repair crew is admissible on the issue of assumption of risk. The court said in part:

"Similar cases to the one now before us have often arisen. In *Cum. Tel. Co. v. Loomis* (87 Tenn., 504, 11 S. W., 356), it was held that a 'charge to the effect that a servant may assume that a telephone pole, which he is required to climb, in due course of his employment, is safe and suitable for that purpose, is erroneous in a suit brought by the servant for injuries caused by the breaking of a pole in that it relieves him from the exercise of ordinary care for his own safety, and decides that he was not the company's inspector of poles, a disputed fact.'

"*McGorty v. S. & N. E. T. Co.* (69 Conn., 635, 38 Atl., 359, 61 Am. St. Rep., 62) was a case much like this. The court said: 'We have no occasion, upon the facts found, to consider whether the foreman, Phelps, was a fellow-servant of the plaintiff, a question discussed in the briefs of counsel. The accident did not occur from the negligence of Phelps. It is true he directed the plaintiff to climb the pole, and in answer to the latter's inquiry, truthfully said, as might any other lineman who had tested the pole for himself, that he had been up the pole, and expressed his opinion that it was safe. But the plaintiff knew that it was not a part of the duty of the foreman to instruct an experienced lineman as to the safety of a pole he was about to climb, and from the facts found we must assume that, although he knew that in obedience to the order of the foreman he was required to do the work upon the pole, yet he was to rely upon his own judgment in determining whether it was safe to climb it without testing it or supporting it, and that it was his right to secure the pole before climbing it if he doubted its safety. It can not be laid down as a proposition of law, as seems to be claimed by plaintiff's counsel, that the linemen of telegraph and telephone companies have a right to rely upon the soundness and safety of the poles upon which they are working, and that it is the duty of such companies to inspect and test poles and support such as are insecure before permitting their linemen to climb them. Whether it is incumbent upon the master or the servant to perform such a duty is usually a question of fact depending upon the terms of the contract of employment, the servant's knowledge of the hazards of the work in which he is engaged, his ability and opportunity to discover the dangers to which he is

exposed and to avoid them, and upon other circumstances. Employers have a right to decide how their work shall be performed and may employ men to work with dangerous implements and in unsafe places without incurring liability for injuries sustained by workmen who knew or ought to have known the hazards of the service which they have chosen to enter. *Hayden v. Smithville Mfg. Co.*, 29 Conn., 548; *Dixon v. Western Union Tel. Co.*, 68 Fed., 630; *Green v. Western Union Tel. Co.*, C. C., 72 Fed., 250; *Flood v. Western Union Tel. Co.*, 131 N. Y., 603, 30 N. E., 196; *Cumberland Telephone Co. v. Loomis*, 87 Tenn., 540, 11 S. W., 356. See, also, *Tanner v. N. Y., N. H. & H. R. R. R.*, 180 Mass., 572, 62 N. E., 993, and *Sias v. Con. L. Co.*, 73 Vt., 35, 50 Atl., 554.

"The court erred in excluding testimony offered to show that it was the universal custom of such railroad companies to omit other inspection than that made by the repair crew, and it was also error to instruct the jury that such omission constituted negligence. Under the undisputed proof and the broad admissions of the plaintiff himself, the court should have directed a verdict for the defendant."

#### Negligence; Dangerous Premises; Department Store.

[New York Law Journal.]

In *Bloomer v. Snellenberg*, in the Supreme Court of Pennsylvania (April, 1908, 69 Atl., 1124), it was held that an owner of a department store can not with impunity expose intending customers to unreasonable risk.

It was actually decided that a person walking in the aisle of a department store is not required to exercise the same degree of caution in looking for obstructions on the floor as if he were walking on the highway. The court said in part:

"The plaintiff in this case entered the department store of the defendants for the purpose of making purchases. While walking along one of the principal aisles in the store she stumbled upon an obstruction or inequality in the passageway, caused by an incline which passed from a floor at a higher level at the left side of the aisle to a point even with the passageway at or near the right side. The sides of the incline facing the direction from which those using the passageway approached were perpendicular, and varied in height from about eight inches at one side down to a point at the other. There was no guard rail or warning, and nothing to indicate to those passing the presence of this obstruction upon the floor, extending nearly across the aisle. Plaintiff charges that the placing of such an unguarded obstruction in the passageway was not a reasonable thing to do, and therefore constituted negligence. It is certainly true that where the owner or occupier of premises, in the prosecution of his own purposes, invites another to come upon the premises, he can not with impunity expose the visitor to an unreasonable risk of any sort, as, for example, to an open hole in a passageway, or to a rope or other obstacle stretched across the aisle, liable to trip the foot. Had the obstacle in this case been of so pronounced a character no one could question its unreasonableness."

"The learned trial judge was of the opinion that

under the facts established by the evidence, with regard to the location and character of the obstruction, negligence might be inferred from its existence, and in a very careful charge, pointing out that the defendants were bound to do what people of ordinary good judgment and common sense would do, and to refrain from doing that which people of common sense under all the circumstances would not do, he left it to the jury to say whether, judged by that standard, the maintenance of the incline in the form in which it was constructed was a careless thing. We think he was right in so doing. So, also, as to the question of contributory negligence upon the part of the plaintiff. That, under the circumstances, was properly left to the jury as a question of fact. Counsel for appellant argued strongly for the application to this case of the more rigid rule which properly governs one walking upon the public highway. But the circumstances are entirely different. Customers are invited into a store and to walk along the aisles where goods are displayed upon every hand for the very purpose of catching the eye and attracting the attention of those who use the passageways. It is not reasonable to expect that the same degree of attention shall be bestowed upon the placing of the feet, under such circumstances, as would properly be required outside upon the public highway. The passageway ought to be kept reasonably clear for the use of those who at the time are expected to be, to some extent, using their eyes in the inspection of goods and merchandise spread before them for that purpose. It may be that the plaintiff, while looking at the goods around her rather than at the floor at her feet in search of obstacles, was not using the caution which reasonably prudent persons would be expected to use under the circumstances, but that was a question of fact for the jury and not of law for the court. It was carefully submitted to the jury in a charge to which no exception was taken by the defendants. Counsel for appellants complain only of the refusal of binding instructions in favor of defendants. To have given such instructions in this case would have been an invasion of the province of the jury."

**Negligence—Minors.**—The use, by a boy who has found a dynamite cap, of a dry electric battery which he also finds, to explode the cap, is held, in *Aikin v. Bradley Engineering & M. Co.* (Wash.), 92 Pac., 903, 14 L. R. A. (N. S.), 586, not to be such an intervening cause as to relieve one guilty of negligence with respect to the care of the cap from liability for injury to the boy from its explosion.

A 13-year-old boy who, after leaving a position 20 feet from a railroad track, where he looks for an approaching train, proceeds on his bicycle towards and onto the track, and, the bicycle being stopped by the rails, attempts to propel it over them without again looking for a train, is held, in *Gehring v. Atlantic City R. Co.* (N. J.), 68 Atl., 61, 14 L. R. A. (N. S.), 312, to be guilty of such negligence that he can not hold the railroad company liable for injuries caused by being struck by the train, which approaches without giving any signals, although the stoppage of the wheel is due to the removal of the planking so that a trench is left in the highway, which makes the use of the crossing difficult.

**Parent and Child; Torts of Child.**

In *Bassett v. Riley*, in the St. Louis Court of Appeals, Missouri (May, 1908, 111 S. W., 696), which was an action against a father for the tort of his son in killing plaintiff's dog, it appeared that when the boy stepped out of the house with the gun in his hand, defendant, who was behind the house, asked the boy what he intended to do with the gun, that the latter replied he intended to scare a dog, and then went around the house and fired the shot. It was held that defendant was not liable. The court said in part:

"The complaint alleges Charles Riley, the minor son, shot and killed the dog in the presence and with the knowledge and consent of his father, and on those allegations it is sought to hold appellant liable.

"The sufficiency of the complaint is challenged, but we will not determine the question, because in our opinion the evidence is insufficient to support the judgment against appellant. While respondent was driving in a buggy along a road which ran past the yard of appellant's house the dog, which was following the buggy, leaped over the fence into the yard. Charles Riley, son of appellant, and then 17 years old, spied the dog, got a gun from the house and went into the yard. As he did this appellant was on his way to the house from the barn, some 300 feet distant from his son and to the rear of the house. He saw the latter step out with the gun and asked him what he was going to do. The son said he was going to scare a dog, then passed around the house and out of his father's vision, and the latter saw him no more until after the shooting. Appellant walked to his house, stepped on the back porch, from which he could see through the hall to the front porch, and caught a glimpse of the dog, which had jumped on the front porch. He then recognized the animal as respondent's, which he swore he had not done before, and an instant later he heard the report of the gun. The ball struck the dog in the spine and caused its death in a few minutes. Charles Riley swore he only shot to scare the dog, without intending to wound him, and that the casualty was purely accidental. Next morning respondent called at appellant's house to complain of the occurrence, when the boy stated to him it was accidental, and both he and appellant expressed regret that it had happened. The two men were neighbors and had adjoining farms. About two weeks before the dog was killed he had been set on a cow belonging to appellant, but in respondent's field, and respondent swore appellant then said with an oath and in the presence of his son he would kill the dog. Appellant admitted he might have made the remark, but said it was simply an ejaculation of anger at the time, and he had no intention of injuring the dog. Such is the substance of the testimony relied on to lay appellant liable. There is some evidence regarding what appellant swore at the first trial before the justice of the peace, but we think his testimony on that occasion, as related by the witnesses, does not differ materially from what he gave on the trial in the Circuit Court.

"It is unnecessary to attempt to outline in the present case the scope of the rules of law governing the responsibility of a father for the tort of his minor child. There is no liability merely because of the relationship. *Baker v. Haldeman*, 24 Mo.,

219, 69 Am. Dec., 430; *Paul v. Hummell*, 43 Mo., 119, 97 Am. Dec., 381. When Charles Riley shot the dog he was not engaged in his father's service so as to make the latter responsible because of the relation of master and servant. Neither was it shown appellant afterward sanctioned or approved the act. As to whether appellant would be answerable if he knew, or in reason ought to have known, his son intended to shoot the dog in time to interfere or protest, and did or said nothing to prevent the shooting, we will not decide, because we are convinced there was no substantial evidence from which the jury could do more than conjecture appellant had knowledge of such intention on the part of his son, if, indeed, the latter cherished it, which is doubtful. The incident in the field two weeks before gives ground to suspect appellant, but suspicion will not warrant a verdict against him. The evidence must be such as fairly to support not a mere surmise, but a finding that he had reason to know his son's intention was tortious. Otherwise he was no more answerable than if the incident had occurred in his absence, and clearly, if this was the case, he would not be liable, as may be seen from the precedents on the question of a father's liability for torts of his minor child collected in the note to *Broadstreet v. Hall*, 168 Ind., 192, 80 N. E., 145, 10 L. R. A., N. S., 933. All the testimony touching the point shows that when the boy stepped out of the house with the gun in his hand appellant was behind the house; that when he inquired what the boy intended to do with the gun the latter replied he intended to scare a dog, then went around the house, and in a moment or two fired the shot. Under the decisions in this State cited supra, and those in other jurisdictions, no case was proved against appellant."

**Corporations; Payment for Capital Stock in Overvalued Property.**

[Central Law Journal.]

The subject of payment of capital stock of a corporation in overvalued property, and the consequent liability of the stockholder to the creditors of the corporation is discussed at length in *Johnson v. Tennessee Oil, etc., Co.* (N. J.), 69 Atl. Rep., 768. The suit was a creditors' bill brought by complainant on behalf of himself and all other creditors. Prior to bringing the suit a judgment had been recovered in the State of New Jersey, and execution having been issued was returned unsatisfied. The theory under which the suit was brought was that the capital stock was paid up in property grossly overvalued, and that the stockholders were, therefore, liable to the creditors of the corporation for the difference between the value of the property turned over to the corporation and the par value of the stock, or such proportion thereof as might be necessary to satisfy the claims of the creditors. The "trust fund" theory, as it is called, is examined by the court at great length, and the authorities reviewed. The "trust fund" theory of capital stock has in recent years become a fixed principle in the law of corporations. Under this theory the capital stock of a corporation is a trust fund for the benefit of the creditors first, and then the stockholders. As is said in the principal case: "For a fraudulent use of the statutory and charter provisions by the

issue of stock for property at a fraudulent overvaluation the holders of stock so issued would, however, remain subject to liability to creditors, under the equitable principles generally referred to as the 'trust fund' theory of capital stock. The capitalization in this case was so grossly excessive as to be fraudulent, and the complainant would be entitled to relief on this ground of fraud but for the fact that he was a subsequent creditor, with full notice of the fraudulent overvaluation."

The rule is founded upon the supposed reliance of the creditor upon the assets of the company as represented by its capital stock, it being held that a creditor dealing with a concern having a paid-up capital stock of say one hundred thousand dollars has a right to assume that the corporation has received one hundred thousand dollars in payment of such capitalization, either in money, or in money's worth. If, then, it develops that the directors and stockholders have bartered away the capital stock for some comparatively worthless consideration, as some patent of unknown value, or oil leases, as in the principal case, or for tangible property which is not reasonably worth anything like the amount of capital stock issued in payment, the stockholders are liable at the suit of the defrauded creditor for the difference between what they have actually paid, and the par value of the stock received.

The question has frequently been raised as to the circumstances under which the stockholder may become liable, for example, whether he is liable if he has acted in good faith and really believed that the property was of the value of the stock received. There is a strong tendency to hold the stockholder liable even where he has acted in good faith. In other words, the actual value of the property is the test, and good faith is no defense. *Simons v. Vulcan Oil Co.*, 61 Pa. St., 202. On this point the Supreme Court of Missouri, in the case of *Berry v. Rood*, 168 Mo., 331, said: "When men are carried away by a mining prospect they have a right to take such chances in speculation as they see fit in order to develop the prospect, provided they involve only themselves. But when they endeavor to hide their individual liability in a corporation and launch upon the business community a company which they proclaim as solemnly as men can proclaim anything, has a full paid capital of \$300,000, and invite confidence accordingly, when they well knew that so far as then developed, it has not 5 per cent of the amount available for use in the treasury, they violate both the letter and the spirit of our laws on this subject and render themselves liable to creditors who have been misled, to the extent of their unpaid capital stock." And, again, the same court, in *Meyer's case*, 192 Mo., 189, said: "The property must be fully equal to the value placed upon it, and its value is determined by the fact and not by the opinions of the persons turning it over, even though they may have honestly believed it to be worth the amount certified."

In the principal case, the American trust doctrine is adhered to, but another principle defeated the complainant. He had knowledge of all the facts at the time he became a creditor. In fact, he was the attorney for the company, who engineered the deal, and the court holds, in line with the best authority, that as he had knowledge of the facts, he must stand in the position of any other creditor with notice. Equity does not grant this form of

relief in these cases to those who know the actual facts, or who are put on inquiry, and nevertheless extend credit. The case is one that will repay a careful reading.

**Sales; Failure to Perform Executory Agreement Which is Part of Consideration.**  
[Central Law Journal.]

In the recent case of *Bland v. Wandel* (Iowa), 114 N. W. Rep. 899, it is held, that mere failure to perform an executory agreement which is part of the consideration of or the inducement to a sale is not in itself proof of fraud existing at the time of the sale.

Defendant wrote plaintiff that he had ordered a carload of flour elsewhere, which was unsatisfactory, and would cancel the order if plaintiff would accept the order for a carload on terms mentioned in defendant's letter. The order was accepted. Afterwards, plaintiff learned that prior to the giving of this order, defendant had placed a mortgage on his property in favor of intervenor. Defendant did not cancel the previous order for a carload of flour as he had stated he would, and, having become involved, plaintiff brought replevin to recover the flour sold, setting up defendant's failure to rescind the prior order as a fraud. The court says:

"It is elementary that the mere failure to perform an executory agreement which is part of the consideration or inducement to the making of a contract of sale will not per se constitute such fraud as to authorize the subsequent rescission of the contract by the other party." Citing *Van Vechten v. Smith*, 59 Iowa, 173, 13 N. W. Rep., 94; *State Bank of Indiana v. Mentzer*, 125 Iowa, 101, 100 N. W. Rep., 69; *State Bank of Indiana v. Gates*, 114 Iowa, 323, 86 N. W. Rep., 311; *Chicago, T. & M. C. R. Co. v. Titterton*, 84 Tex., 218, 19 S. W. Rep., 472, 31 Am. St. Rep., 39. The court goes on to say that: "If it can be shown that when the inducing promise was made and a sale consummated in reliance thereon the buyer had a secret intention not to perform the obligation which he undertook to perform in the future, then this secret intention not to perform, in itself, constitutes such fraud as to warrant a rescission if the promise was relied on by the seller, and was a material inducement to the making of the sale. *Cox Shoe Co. v. Adams*, 105 Iowa, 402, 75 N. W. Rep., 316; *Swift v. Rounds*, 19 R. I., 527, 35 Atl. Rep., 45, 33 L. R. A., 561, 61 Am. St. Rep., 791; *Donaldson v. Farwell*, 93 U. S., 631, 23 L. Ed., 993. But the fraud relied upon must have existed at the time of the sale; it can not consist in a subsequent failure to perform an executory agreement. *Kearney Mill. & E. Co. v. Union Pac. R. Co.*, 97 Iowa, 719, 66 N. W. Rep., 1059, 59 Am. St. Rep., 434. The mere failure to perform an executory agreement which is a part of the consideration of or inducement to the sale is not in itself proof of fraud existing at the time of the sale. *Theusen v. Bryan*, 113 Iowa, 496, 503, 85 N. W. Rep., 802; *Starr v. Stevenson*, 91 Iowa, 684, 60 N. W. Rep., 217."

**Homicide.**—In *State v. Marfaudille* (Wash.), 92 Pac., 939, 14 L. R. A. (N. S.), 346, which was a prosecution for homicide caused by a spring gun set by the accused, it is held that one has no right to take human life, directly or indirectly, to prevent a mere trespass upon or theft of property.

**Parol Evidence Affecting Writings; Contracts; Consideration; "Outstanding and Open Account;" Agreement for Benefit of Third Person.**

In *Kramer v. Gardner*, in the Supreme Court of Minnesota (June, 1908, 116 N. W., 925), the following is the syllabus by the court:

"Where the statement in a contract as to the consideration is more than a mere acknowledgment of the payment of money, and is of a contractual nature, the general rule permitting the true consideration of written contracts to be inquired into by parol evidence does not apply.

"Where the consideration consists of an unambiguous, specific, and direct promise to do certain things, the writing is conclusive, and can not be varied by extrinsic evidence.

"The expression 'outstanding and open account' has a well-defined meaning in legal and commercial transactions, and does not include bills of exchange, promissory notes, or other written evidences of indebtedness.

"In a contract for the sale of a retail stock of goods the purchaser assumed and agreed to pay the 'outstanding and open account' held by a designated creditor against the seller. Held, that the agreement did not include an indebtedness arising from promissory notes held by the creditor so named, and, further, that parol evidence was inadmissible to show that the parties intended to include such notes.

"A stranger to a contract between others, in which one of the parties promises to do something for his benefit, there being no consideration from him, and no obligation to him from the promisee respecting the subject-matter of the promise, can not recover thereon. *Jefferson v. Asch*, 53 Minn., 446, 55 N. W., 604, 25 L. R. A., 257, 39 Am. St. Rep., 618, followed and applied; *Follansbee v. Johnson*, 28 Minn., 311, 9 N. W., 882, and similar cases, distinguished."

**Limitation of Actions; Covenants; Actions for Breach; Time of Accrual of Cause of Action; Eviction; Measure of Damages.**

In *Brooks v. Mohl*, in the Supreme Court of Minnesota (June, 1908, 116 N. W., 931), the following is the syllabus by the court:

"If, at the date of the execution of a warranty deed, a superior title is outstanding in a third person, the covenants of that deed are broken whenever that title is actually asserted against the covenantee, the premises are claimed under it, and the covenantee is compelled to yield and does yield his claim to the superior title.

"The vendee's right of action against the warrantor does not date from the time when the deed was delivered, so as to be barred by the Statutes of Limitations at the end of six years thereafter.

"The vendee in such a case may extinguish the paramount title by purchase.

"The ordinary measure of damages on breach of the covenants of a warranty deed is the consideration paid, with interest, together with costs and expenses, including an attorney's fee, reasonably and in good faith incurred in defending title and resisting the eviction.

"Where the vendee buys the paramount title, the measure of damages is the amount paid therefor, and interest, provided the sum does not exceed the consideration money and interest.

"If the purchaser has been actually deprived of part only of the subject of his bargain, his damages correspond."

**Railroads; Duty to Look and Listen; Signal from Flagman; Union Pacific R. Co. v. Rosewater, 157 Fed., 168.**

[The Law Register.]

Held, that the placing of gates or the stationing of flagmen at railroad crossings in a city is not a duty imposed by statute or municipal ordinance on railroad companies, or voluntarily assumed by them, for the purpose of relieving the traveler on the street from taking those precautions for his own safety required by the long-settled rule of law, but as an additional precaution to meet the increased peril resulting from local conditions in cities; and open gates or a signal from a flagman to cross, does not relieve a traveler from the duty to look and listen before entering upon the tracks.

A failure to stop, look and listen before crossing an unguarded railway track is evidence of negligence. *Shofield v. Chicago, etc., Railway Co.*, 114 U. S., 615. And, according to the Pennsylvania rule, it is negligence per se which will bar recovery, unless it affirmatively appears that it did not approximately contribute to the injury. *Penna. R. Co. v. Beale*, 73 Pa. St., 504; *Philadelphia, etc., R. Co. v. Hogeland*, 66 Md., 149. But where the guard stationed at the crossing directs the traveler to cross, in no jurisdiction is the failure to stop, look and listen, negligence as a matter of law. It is a question of fact for the jury. *Conaty v. New York, etc., R. Co.*, 164 Mass., 572; *Kane v. Railroad*, 132 N. Y., 160. And in Ohio the Supreme Court of the State has taken a more emphatic position by declaring that an open gate, with the gateman in charge, is notice of a clear track and safe crossing; and it is not negligence to pass upon the tracks without stopping to listen. *Railroad v. Schneider*, 45 Ohio St., 678.

**Master and Servant.**—The owner of an automobile who keeps it at a public garage is held, in *Jones v. Hoge* (Wash.), 92 Pac., 433, 14 L. R. A. (N. S.), 216, not to be liable for personal injuries sustained by a person by being run over by it in consequence of the negligence of the chauffeur, who had taken the machine without the knowledge or permission of the owner, and was using it on an errand personal to himself, even though he was not a competent and careful operator.

That a child employed in a factory and sent by the master onto an unsafe platform to pass the time when his services are not actually in demand is, while there, resting, is held, in *Chambers v. Woodbury Mfg. Co.* (Md.), 68 Atl., 290, 14 L. R. A. (N. S.), 383, not to relieve the master of the duty to warn him as to the danger of the position.

The rule rendering a master liable for the acts of his servant in the use of a dangerous agency of which he is placed in charge is held, in *Daugherty v. Chicago, M. & St. P. R. Co.* (Iowa), 114 N. W., 902, 14 L. R. A. (N. S.), 590, not to apply to render him liable for injury to a boy invited by the servant to ride on a hand car, which is due, not to the dangerous character of the car, but to the personal negligence of those in charge of it.

The rule that a servant can not recover damages for an injury he could have avoided by ordinary or reasonable care is held, in *Beghold v. Auto Body Co.*, 149 Mich., 14, 112 N. W., 691, 14 L. R. A. (N. S.), 609, to apply to cases of negligence in law arising from the violation of a statute.



## Notes of Recent Decisions.

**Carriers.**—The owner of a twenty-trip railroad ticket, who without the knowledge of the company, has broken the agreement under which it is issued by letting others ride on it, is held, in *Baltimore & O. S. W. R. Co. v. Evans (Ind.)*, 82 N. E., 773, 14 L. R. A. (N. S.), 368, to have no right to recover damages for being put off the train on the wrongful ground that the ticket has expired.

A consignee who did not call for his mail, and would not have received notice of the arrival of his package at an express office, at which deliveries are made only at the office after notice by mail, is held, in *Hutchinson v. United States Exp. Co. (W. Va.)*, 59 S. E., 949, 14 L. R. A. (N. S.), 393, to have no right of action against the company as carrier because of its failure to send the accustomed notice, for a package which arrived at 4.30 p. m. on Saturday, and remained in the office until the following Monday night, when it was stolen without fault or negligence on the part of the company.

A contract between a carrier and a shipper to transport the latter's goods in interstate or foreign commerce at the then established rate for a definite time is held, in *Armour Packing Co. v. United States*, 82 C. C. A., 135, 153 Fed., 1, 14 L. R. A. (N. S.), 400, to be invalid.

The provision in a railway ticket that in cases of dispute between passenger and conductor the passenger shall pay the rate which the conductor demands, get a receipt from him, and report to the general office, where the same will receive prompt attention, is held, in *Illinois C. R. Co. v. Gortikov (Miss.)*, 45 So., 363, 14 L. R. A. (N. S.), 464, to be void for unreasonableness.

That a carrier can not escape liability for negligently injuring one whom it has accepted as a passenger, although he claims transportation under a contract which violates the provisions of the Constitution against free passes, is declared in *Bradburn v. Whatcom County R. & Light Co.*, 45 Wash., 582, 88 Pac., 1020, 14 L. R. A. (N. S.), 526.

That a consignee did not, as matter of law, have a reasonable time in which to take goods shipped to him when he had received no bill of lading and was notified of their arrival at 4 or 5 o'clock p. m. of the day they reached their destination, and it was customary for the carrier's office to close at 6 o'clock p. m., and the goods were burned in their car that night, is declared, in *McGregor v. Oregon R. & Nav. Co. (Or.)*, 93 Pac., 465, 14 L. R. A. (N. S.), 668.

**Contracts.**—Failure to read an instrument before signing it is held, in *Hale v. Hale (W. Va.)*, 59 S. E., 1056, 14 L. R. A. (N. S.), 221, not to bar relief therefrom in equity on the ground of negligence or estoppel, when the circumstances attending the transaction were such as to lead the party to believe he was signing a paper of an entirely different character.

That a licensee of a right to use a device under a patent may be required to pay royalties on a device which is not in fact within the protection of the patent, so long as the parties treat it as within such protection, is declared in *Strong v. Carver Cotton Gin Co. (Mass.)*, 83 N. E., 328, 14 L. R. A. (N. S.), 274.

**Petition in Bankruptcy—Dismissal—Collusive Selection of Receivers Not Sufficient Ground.**—In

*Birmingham Coal & Iron Co. v. Southern Steel Co.*, 20 Am. B. R. 151, it has been held that where a petition for adjudication of a corporation is otherwise sufficient, a prayer for the appointment of receivers selected by collusion between the alleged bankrupt and the petitioning creditors will be disregarded and an order of adjudication entered and disinterested receivers appointed.

**Adverse Possession.**—A sheriff's deed of land sold for taxes is held, in *Greenleaf v. Bartlett (N. C.)*, 60 S. E., 419, 14 L. R. A. (N. S.), 660, to constitute color of title upon which to base adverse possession barring claimants under the former owner, although the deed is invalid because of the violation of the statutory duty of the sheriff to bid it in for the county, no person being willing to pay the tax for some portion less than the entire tract.

**Evidence.**—That the court will not determine, as matter of common knowledge, that a train which comes into collision with and injures a person on the track might have been stopped more quickly than it was by reversing the engine, is declared in *Harris v. Nashville, C. & St. L. R. Co. (Ala.)*, 44 So., 962, 14 L. R. A. (N. S.), 281, where the engineer testifies that, although the engine was not reversed, the most efficient means for quickly stopping the train were employed.

A question asked of a witness in an action of forcible entry and detainer, as to who was in possession of the property, is held, in *Iler v. Miller (Neb.)*, 111 N. W., 589, 14 L. R. A. (N. S.), 289, not to be objectionable as calling for the conclusion of the witness on legal possession, in the absence of anything in the form of the question, or of previous questions put to witnesses, indicating that the word was used in its technical sense as synonymous with "seisin."

If a witness has become incompetent to testify at the second trial of an action on account of the death of the other party to the transaction, because of a statute providing that no person shall be examined as a witness, in regard to any personal transaction with a person who has, at the commencement of the examination, deceased, against his personal representative, it is held, in *Greenlee v. Mosnat (Iowa)*, 111 N. W., 996, 14 L. R. A. (N. S.), 488, that a transcript of his testimony, taken at the former trial, when the other person was living, can not be admitted, notwithstanding a statutory provision that a transcript of testimony taken upon the trial, when material and competent, shall be admissible on a retrial of the cause.

The record and judgment in a proceeding to try the right of property levied upon under an execution by an officer, finding the property not to be the property of the debtor, is held, in *Smith v. White (W. Va.)*, 60 S. E., 404, 14 L. R. A. (N. S.), 530, not to be admissible in an action by the successful claimant in said proceedings against the officer for damages for the seizure and detention of the property.

An attending physician of a hospital who is the keeper and has charge of the records of the institution which are required to be kept by ordinance is held, in *Smart v. Kansas City (Mo.)*, 105 S. W., 709, 14 L. R. A. (N. S.), 565, to be incompetent to testify as to the diagnosis of a patient's case as shown by such physician's record.

**Wills.**—A will attested by the names of certain persons who append the word "witness" to their signatures is held, in *Mead v. Presbyterian Church*, 229 Ill. 526, 82 N. E., 371, 14 L. R. A. (N. S.), 255, to be properly admitted to probate, although they can not remember that the formal requisites to the execution of the will were duly observed, and the will contains no formal attestation clause.

That the name of the testatrix is incorrectly given in the attestation clause of a will is held, in *Re Diener (Neb.)*, 113 N. W., 149, 14 L. R. A. (N. S.), 259, not to affect its validity, nor to prevent the probate of the instrument, where the subscribing witnesses are clear in their testimony that all statutory requirements were observed in its execution.

**Service of Summons.**—Service of summons on the joint soliciting agent of a domestic and a foreign corporation running connecting transportation lines, contracts being regularly made by the domestic corporation for and in the name of the foreign corporation, is held, in *Central R. Co. v. Eichberg (Md.)*, 68 Atl., 690, 14 L. R. A. (N. S.), 389, to be sufficient to bind the latter, under statutes authorizing suits against foreign corporations doing business within the state by service upon their agents therein.

A suitor going to, attending, or returning from, court for the purposes of the case to which he is a party is held, in *Barber v. Knowles*, 77 Ohio St., 81, 82 N. E., 1065, 14 L. R. A. (N. S.), 663, to be privileged from service of summons while so going, attending, or returning, and whether he be a resident or nonresident of the state.

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A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

Richard A. Ford, Attorney.  
Supreme Court of the District of Columbia,  
Holding the Probate Court.  
Estate of Alexander J. Bentley, Deceased.  
No. 15,442. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Alexander G. Bentley, it is ordered, this 20th day of August, A. D. 1908, that Horace Bentley, Alice C. Bentley, and all others concerned, appear in said court on Monday, the 31st day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less [Seal] than thirty days before said return day.

WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 34-3t

Erskine Gordon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Anna Rebecca Green, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 20th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 20th day of August, 1908. WILLIAM A. GORDON, J. HOLDS-WORTH GORDON, Century Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,306. Administration. [Seal.] 34-3t

Ralston & Siddons, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marion S. F. Jany, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of August, 1908. FREDK L. SIDDONS, Bond Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,425. Administration. [Seal.] 34-3t

J. H. Stewart, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In Re Estate of Levi Brooks, Jr., Deceased.  
No. 13,425.

Upon consideration of report of the sale by the executor to the court of the following described property, to wit: All of that certain piece or parcel of land being part of a tract of land called James Gift, and is situated in the County of Washington, District of Columbia, beginning at the southwest corner of Thomas Myrick's lot in a line of Van Riswick's land, thence with Myrick's land N. 14° ½ W. 39 perches; thence N. 69° ½ W. 5 perches and fifty-six hundredths of a perch; thence S. 14° ½ E. 42 perches to the line of Van Riswick's land; thence with said line N. 88° E. 4 perches, to the place of the beginning, containing one acre of land, for the sum of \$500.00 cash to Michael P. Callaghan, and the executor praying that said sale be ratified and confirmed, it is, this 7th day of August, 1908, by the court ordered, that said sale be, and the same hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of September, 1908. Provided a copy of this order be published once a week for three successive weeks before said last-named day in The Washington Law Reporter and The National Union. JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 34-3t

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**Legal Notices.**

**M. J. Colbert and H. W. Sohn, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Mary A. Horrigan et al. v. The Unknown Heirs, etc.,**  
 of John Peltz et al. Equity No. 27,941.

The object of this suit is to declare complainants' title to be good in fee simple by adverse possession to the following described land and premises in the city of Washington, District of Columbia, to-wit: The east 17.83 feet front by the full depth of original lot three, in square five hundred and fifty-eight, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, it is this 19th day of August, 1908, ordered that the defendants, the unknown heirs, allenees, and devisees of John Peltz, Alexander M. Peltz, and Michael B. Peltz, and the unknown heirs, allenees, and devisees of John Davis and Charles Glover, executors of John Peltz, cause their appearance to be entered herein on or before the first rule day, occurring after the expiration of two months from this date; otherwise the cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month for a period not less than three months. This order shall be published twice a month for two months in The Washington Law Reporter, the court not deeming it necessary for the same to be published in any other paper, and no other paper having been selected by the parties.

[Seal] **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 84-St

**Chas. S. Shreve, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William C. O'Meara**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of August, 1908. **JOHN C. COX, 227 B st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,444. Administration. [Seal.] 84-St

**L. M. King, Solicitor**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In re Estate of Robert E. Walker, Deceased.**  
 No. 14,994.

The object of the petition filed in this cause is to sell the real estate owned by decedent for the payment of debts, the petition being filed by the administrator. On motion of the administrator, it is, this 18th day of August, 1908, ordered that **Eva Parham, Cora Parham, Amanda Parham, Oakley Parham, and Amelia Hardy**, nonresident heirs at law and next of kin of **Robert E. Walker**, deceased, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order is published at least once a week for three successive weeks

[Seal] **In The Washington Law Reporter and The Washington Bee.** **JOB BARNARD, Justice.** A true copy. Attest: **James Tanner, Register of Wills.** 84-St

**R. Preston Shealey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **James H. McGill**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 18th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of August, 1908. **ROBERT PRESTON SHEALEY, Equity Bldg.; SAMUEL A. DRURY, 1811 G st. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,321. Administration. [Seal.] 84-St

**Legal Notices.**

**E. N. Hopewell, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**Bernard V. Moran et al. v. Anacostia Brick Company.**  
 Equity, No. 27,887.

Upon consideration of the petition of the receiver of the defendant company filed herein, and it appearing to the court that the said receiver has sold at public auction to **Adolf Gude** the plant of the **Anacostia Brick Company** for \$7,000 cash, it is, by the court, this 14th day of August, 1908, ordered that said sale be, and hereby is, ratified and confirmed, unless cause to the contrary be shown on or before the 14th day of September, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in **The Washington Law Reporter and Evening** [Seal] **Star.** By the Court: **JOB BARNARD, Justice.** A true copy. Test: **J. R. Young, Clerk,** by **Wms. F. Lemon, Asst. Clerk.** 84-St

**Maddox & Gatley, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**In the Matter of The Farmers' Trust, Banking and**  
**Deposit Company of Baltimore, Maryland.**  
 Equity, No. 27,402.

Upon consideration of the petition of **R. Harrison Johnson**, surviving receiver, herein this day filed, it is, this 18th day of August, 1908, ordered that said surviving receiver be, and he is hereby, authorized and directed to sell to **C. A. Snow** lots numbered fifty-six (56) to sixty-three (63), both inclusive, in square numbered nine hundred, sixty-two (962), Washington, D. C., together with the improvements thereon, for the sum of thirty-two thousand (\$32,000) dollars in cash; all taxes, general and special, rents, water bills, and insurance to be adjusted to the date of the delivery of the deed; and that said sale so made shall be finally ratified and confirmed unless cause to the contrary be shown on or before the 8th day of September, 1908. Providing a copy of this order be published in **The Washington Law Reporter** once a week for three (3) successive weeks

[Seal] prior to said last mentioned date. By the Court: **JOB BARNARD, Justice.** A true copy. Test: **J. K. Young, Clerk,** by **F. E. Cunningham, Asst. Clerk.** 84-St

**Richard A. Ford, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **William A. Henderson**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 18th day of August, 1908. **R. MILTON HENDERSON, 822 F st. N. W.; CHARLES E. HENDERSON, 1432 N. Y. ave. N. W.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court.** No. 15,448. Administration. [Seal.] 84-St

**Irving Williamson, Solicitor**  
**In the Supreme Court of the District of Columbia.**  
**Norris Macdaniel, Executor of Mary Macdaniel, v. W.**  
**Henry Walker, Trustee, et al.** Equity No. 27,940.

The object of this suit is to foreclose deed of trust, dated November 25, 1892, from **Redford W. Walker et ux.**, to **W. E. Edmonston** and **W. Henry Walker**, trustees, conveying part of the tract in the District of Columbia, known as "Queensborough" or "Inclosure," to secure debt of \$21,000, to **Mary Macdaniel**, on which balance of \$14,784.44 with interest at 5 per cent from November 25, 1907, is due. On motion of the complainant, it is, this 14th day of August, 1908, ordered that the defendants, **Antoniette L. Hill, Redford W. Walker, Jared D. Terrill, Emma J. Hildrup, E. W. Piper, Flora H. Barton, Wilson D. Wing, Francis G. Terrill, George W. Van Sickle, Mary L. S. Sutton, Albert S. Young, Adelaide Mansur, and Katharine S. Foos**, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in **The Washington Law Reporter and The Washington Herald**

[Seal] before said day. **JOB BARNARD, Justice.** A true copy. Test: **J. R. Young, Clerk,** by **E. J. McKee, Asst. Clerk.** 84-St

**Legal Notices.**

W. M. Williams, Solicitor  
In the Supreme Court of the District of Columbia.  
Samuel C. Redman et al. v. Aaron H. Potts et al.  
Equity No. 37,699.

John C. Weedon and W. Mosby Williams, trustees, having reported an offer from M. Rebecca Reid, of nine hundred dollars, cash, for part of the real estate decreed to be sold in this cause, to wit: lot 22, in the subdivision of the estate of Talburt of part of "Chichester" containing 6.40 acres and in said decree particularly described, situate in the District of Columbia, it is, this 14th day of August, 1908, ordered that said trustees be and they are hereby authorized and directed to accept said offer and that the sale of said property will be ratified and confirmed on the 14th day of September, 1908, unless cause to the contrary be shown before said last mentioned day. Provided that a copy of this order be published in each of three successive issues of The Washington Law Reporter, published prior to the last mentioned day. By the Court: JOB BARNARD, Associate Justice. A true copy. [Seal]

Test. J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 84-St

Irwin B. Linton, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah S. Condit Smith, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of August, 1908. IRWIN B. LINTON, 1407 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,365. Administration. [Seal.] 84-St

Chas. H. Bauman, Wilson & Barksdale, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John Angermann, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 13th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 13th day of August, 1908. JOHN GEORGE ANGERMANN, 5th st. and Columbia Road N. W.; JACOB BOOL, 707 S at N. W.; FREDERICK J. KOHLER, 1509 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,440. Administration. [Seal.] 84-St

James H. Taylor, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Estate of Mary J. Nourse, Deceased.  
No. 15,159. Admn.

The object of this proceeding is the sale of the real estate of Mary J. Nourse, deceased. The petition having been filed herein by James B. Nourse and Richard Douglass Nimma, the executors of the estate of Mary J. Nourse, deceased, for the sale of the real estate left by the testatrix, and it appearing to the satisfaction of the court that subpoena has issued to the infant parties of this proceeding, Mary P. Nourse, Charlotte St. G. Nourse, Walter P. Nourse, Annie C. Nourse, Charles J. Nourse, Jr., 3rd, and Julia Nourse, Jr., and that the same has been returned by the marshal "not to be found," on motion of the petitioners, it is this 14th day of August, 1908, ordered that the said infant parties to this proceeding, to wit: Mary P. Nourse, Charlotte St. G. Nourse, Walter P. Nourse, Annie C. Nourse, Charles J. Nourse, Jr., 3rd, and Julia Nourse, Jr., shall appear or cause appearance to be entered herein, answer make to said petition, and cause show, if any they have, why same should not be granted on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise this cause shall be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in [Seal] The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 84-St

**Legal Notices.**

Thos. Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Rebecca S. Nichols, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legal authenticated, to the subscriber, on or before the 14th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of August, 1908. THOMAS WALKER, 506 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,291. Administration. [Seal.] 84-St

Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary V. Douglas, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of August, 1908. ANNA J. DOUGLAS, 121 11th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,435. Administration. [Seal.] 84-St

**SECOND INSERTION.**

Fillmore Beall, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jane V. Arnold, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of August, 1908. GEORGE K. ARNOLD, 1637 Wia. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,446. Administration. [Seal.] 83-St

Darr, Peyser & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth L. Kelley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of August, 1908. CHAS. S. LUSK, 1326 New York ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,438. Administration. [Seal.] 83-St

Erskine Gordon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Dahle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1908. HENRY DAHLE, 829 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,441. Administration. [Seal.] 83-St

## Legal Notices.

Basil D. Boteler, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court,  
Estate of Dolores Espinosa, Deceased.  
No. 15,428. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Aelia Epps Everett, it is ordered this 12th day of August, A. D. 1908, that all the unknown heirs at law and next of kin of the said Dolores Espinosa, deceased, and all others concerned, appear in said court on Monday, the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not

[Seal] less than thirty days before said return day.  
JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Carter Carr, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1908. AMERICAN SECURITY AND TRUST CO., by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,404. Administration. [Seal.] 83-8t

Thos. Walker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of George Grice, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of August, 1908. THOMAS WALKER, 506 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,238. Administration. [Seal.] 83-8t

Darr. Peyer & Curtin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth L. Kelley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 7th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of August, 1908. CHAS. S. LUSK, 1326 New York ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,438. Administration. [Seal.] 83-8t

Erskine Gordon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Elizabeth Dahle, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 10th day of August, 1908. HENRY DAHLE, 829 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,441. Administration. [Seal.] 83-8t

## Legal Notices.

[Filed August 10, 1908. J. R. Young, Clerk.]

Jas. H. Taylor, Attorney  
In the Supreme Court of the District of Columbia.  
Alice F. M. Wood et al. v. Joseph L. E. Wood et al.  
No. 7740. Equity Doc. 21.

ORDER FOR APPEARANCE OF ABSENT DEFENDANT.  
The object of this suit is proceeding under the pending petition of the trustees, is final accounting and discharge, and it appearing to the satisfaction of the court that Grace Francis Wood, a daughter born to the complainant, Benjamin Wood, since the last proceeding herein, should be made a party to this cause, and it also appearing to the satisfaction of the court that subpoena issued to said Grace Francis Wood has been returned by the marshal "not to be found." On motion of the petitioners, it is, this 10th day of August, 1908, ordered that the defendant, Grace Francis Wood, infant daughter of the complainant, Benjamin Wood, be made a party defendant to this cause, and that she cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 83-8t

Sieman & Lerch, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Thomas Dennis, Deceased.  
No. 15,428. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Frances E. Dennis, it is ordered this 11th day of August, A. D. 1908, that Anatola B. Dennis, Thomas B. Dennis, and Ida H. B. Dennis Sidell, and all others concerned, appear in said court on Monday, the 14th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

[Seal] fore said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary E. Gennet, Deceased.  
No. 15,400. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Isaac Cooley, it is ordered, this 7th day of August, A. D. 1908, that Fannie S. Bruon and James H. Baker, and all others concerned, appear in said court on Tuesday, the 15th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

[Seal] than thirty days before said return day. JOB BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 83-8t

Howard Boyd, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Mary Ellen Hinton, Deceased.  
Probate No. 15,401.

Application having been made herein for probate of the last will and testament, and codicil thereto, of said deceased, and for letters testamentary on said estate, by Sebastian Hinton, it is ordered this 11th day of August, A. D. 1908, that George B. Hinton, Eric B. Hinton, and William Howard Hinton, and all others concerned, appear in said court on Friday, the 18th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. By the Court: JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 83-8t

[Seal] thirty days before said return day. By the Court: JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 83-8t

# The Washington Law Reporter

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### Breach of Contract of Employment.

In *Brown v. Retsof Mining Company*, decided July, 1908, by the appellate division of the Supreme Court of New York, and reported in the New York Law Journal, the action was to recover damages for breach of a contract of employment. Defendant was a miner and manufacturer of salt, and on May 23, 1899, entered into a contract with plaintiffs by the terms of which the latter were to act as sole selling agents of the defendant within a given territory. This contract was to continue until June 30, 1900, unless a change occurred in the plaintiffs' firm which in the opinion of the defendant rendered the firm inefficient to carry out its part of the contract, in which event the defendant, at its option, might terminate the agreement. On May 17, 1900, plaintiffs wrote defendant in regard to a renewal of the contract, reminding it of a promise that a letter would be sent stating that, in the matter of the contract between them for the future it was to be understood that plaintiffs were the selling agents of defendant "under same conditions as we now are, as long as we continue to conduct the business in as satisfactory a manner as we have done heretofore." Defendant wrote plaintiffs, referring to the contract: "I desire to say that your relations as sales agents

of the Retsof Mining Company will continue under the same conditions as outlined in your contract as long as you conduct the business in a manner satisfactory to the Retsof Mining Company. In view of this fact, I do not see it at all necessary that any formal contract for a specified time be entered into." Under this arrangement the plaintiffs acted as selling agents for the defendant until December 19, 1903, on which day they were notified by letter that the relations existing between them and the defendant would terminate on the 31st day of December, 1903. The reason assigned was the conduct of the plaintiff Shaw in using intoxicating liquors too freely. The plaintiffs, claiming that under the obligations of the contract their discharge as selling agents was unreasonable and without warrant, brought an action to recover damages on account of defendant's breach of contract.

The appellate court construed the contract between the parties as giving the defendant the right to discharge plaintiffs in its discretion, although the conduct of plaintiffs might have been satisfactory to a reasonable employer. The court said:

The case turns principally upon the question whether under the contract the defendant had the right to discharge the plaintiffs without assigning any cause; or, in other words, whether the contract did not provide that the personal taste, fancy, or interest of the employer should be satisfied rather than that of a court or a jury.

The formal contract of May 23, 1899, provided for a definite term of employment, namely, until June 30, 1900, with only one condition named for its prior amendment, which contemplated a change in the firm of the plaintiffs, a change that the defendant might deem would render the firm inefficient properly and satisfactorily to carry out its part of the contract. The subsequent correspondence, however, between the parties was such as to change the terms of this contract somewhat in respect to the duration of employment after the expiration of the former contract. The defendant wrote that the plaintiffs would continue under the same conditions as outlined in the contract "so long as you conduct the business in a manner satisfactory to the Retsof Mining Company." This letter was received by the plaintiffs, and no reply was made thereto; the plaintiffs continued to represent the defendant as formerly, and must, of course, be held to have assented to the conditions expressed in this letter. The former contract did not refer to the manner in which plaintiffs should conduct the business, except as incident to a change in the plaintiffs' firm. This clause of the letter of May 21st engrafted upon the contract a new and distinct provision to the effect that the contract would be continued as long as the plaintiffs conducted the business "in a manner satisfactory" to the defendant.

It is important here to inquire in respect to the nature of the services performed by the plaintiffs for the defendant to ascertain whether they were of such personal, confidential and peculiar character as to lead to the conclusion that the parties meant to contract with a view of giving the



defendant the absolute right to terminate the relationship if its taste, fancy or satisfaction the plaintiffs did not meet. The plaintiff Brown himself gives the character of the services his firm rendered for the defendant in this wise: The plaintiffs and salesmen they employed sold the salt mined by the defendant to all purchasers they could find, traveling throughout their assigned territory looking for such customers and following up sales and prospective customers by correspondence; the plaintiffs' office staff attended to many of the details of delivery; salt that was shipped to New York City, where plaintiffs had their office, came largely in canal boats and the delivery thereof was rather a complicated question; they found berths for these boats and had them towed thereto; engaged stevedores to unload and deliver them and in some cases delivered the salt to the buyers; they insured cargoes and in the event of loss collected the insurance, adjusted the claims; they attended to a number of matters in the interest of the defendant other than selling salt; they went to Washington and appeared before the Ways and Means Committee, advocating first the retention of the duty on salt and after the duty had been removed advocating its being put back; they drew up memorials and devoted a great deal of time to that particular subject; they investigated, at the request of the defendant, certain patents referring to purifying rock salt and reported to it concerning them; they visited Cuba with a view of ascertaining the possibility of defendant selling salt there, the expenses of which trip were paid by the defendant.

The defendant was a large manufacturer and miner of salt with a growing output and a widening field of business. It manufactured different grades of its products which sold at different prices. Owing to a larger consumption by some dealers, and for other reasons, different prices were made upon the same grade. Freight rates differed widely. Terms of payment by different purchasers varied. It was bound to and did adopt peculiar and specific measures for meeting competition. It was engaged in measures to protect the general business of the mining and manufacture of salt, and in different lines of effort to create new markets for its product. With all of these matters and others the plaintiffs had to do, in a measure, at least; the plaintiffs maintained personal and confidential relations with the defendant, and the plaintiffs' services were therefore such that the parties might well have contracted in respect to gratification of defendant's taste and the serving of its convenience and individual preferences. And, in my opinion, that is exactly what the contract purported to do, for it was distinctly provided that it was to continue as long as the plaintiffs conducted the business in a satisfactory manner. The language could not have been plainer. There was no limitation upon the term "satisfactory" as in *Smith v. Robson*, 148 N. Y., 252.

In *Tyler v. Ames*, 6 Lans., 280, the plaintiff was employed to sell engines and the term of employment was one year, if plaintiff could fill the place "satisfactorily." It was held that this word referred to the mental condition of the employer and not the mental condition of a court or jury. The court said: "The right of determining whether the plaintiff filled the place of agent satisfactorily must, from the nature and necessity of the case, belong to the person whose interests are directly

affected by the plaintiff's action. To require the employer under such a contract to prove that plaintiff did not fill the place satisfactorily would be to require of him an impossibility, unless his own oath was taken as to his mental status on the subject. If he is required to prove facts and circumstances that would justify him in feeling dissatisfied with the manner plaintiff filled his office it would be annulling this clause of the contract, as without such a clause he would have the right to dismiss the plaintiff if he did not properly perform his duties."

In *Zeiss v. Am. Wringer Co.* (62 App. Div., 463), the plaintiff was employed as managing agent for the defendant for selling goods and obtaining leases in the business conducted by the defendant; the contract provided that it should continue for and during such times as the business relations between the parties shall be mutually "satisfactory." This court held that it was for the defendant to determine when the plaintiff failed to fill the place as agent satisfactorily and that no one was authorized to review its decision.

In *Crawford v. Mail & Express Publishing Co.* (160 N. Y., 404), the plaintiff was employed to write articles of a certain character for two years provided his services should be "satisfactory" to the defendant. It was held that if his services were unsatisfactory to the defendant for any reason it had the right to terminate the employment, and the defendant was sole judge as to whether the plaintiff's work was satisfactory (see, too, *Brown v. Foster*, 113 Mass., 136; *Zaleski v. Clark*, 44 Conn., 218).

In view of the defendant's absolute right to discharge the plaintiffs in the exercise of discretion, which was not subject to review, it is clearly unimportant to consider the question whether the defendant was actuated by some ulterior motive, such as its desire for the ultimate establishment of the International Salt Company as its selling agent. Nor is it material that the plaintiffs through a long series of years had worked up a profitable business as salt brokers; the plaintiffs voluntarily entered into this contract, whose legal effect they must be held to have known. As was said in *Brown v. Foster* (supra): "Although the compensation of the plaintiff for valuable service and materials may thus be dependent upon the caprice of another who unreasonably refuses to accept the articles manufactured, yet he can not be relieved from the contract into which he has voluntarily entered."

The judgment appealed from stands upon the theory that the defendant had no right to discharge, at its own volition, and that the plaintiffs' conduct would have been satisfactory to a reasonable principal or reasonable employer. As we have pointed out, the contract did not admit of that interpretation, and the judgment must, therefore, be reversed and a new trial granted, costs to abide the event.

All concur.

Master and Servant—Master's Liability.—Where plaintiff was hired by defendant as a farm hand to work in a barn, he agreed impliedly to work in the barn as it then was, unless there was some hidden defect that would not have been obvious upon inspection. *Smith v. Lincoln* (Mass.), 84 N. E. Rep., 498.

# Supreme Court of the United States.

ALBERT W. BROWN, PLAINTIFF IN ERROR,

v.

ESTATE OF GEORGE N. FLETCHER.

JURISDICTION; ARBITRATION AGREEMENT PENDING PROCEEDINGS; DEATH OF PARTY; JUDGMENTS; OF FOREIGN STATE; ADMINISTRATION.

1. An agreement for an arbitration under a rule of court while a case is pending between living parties, although the agreement provides that the decease of either party shall not revoke the submission, but that the arbitration shall continue and that the legal representatives of said parties shall be bound by the final award therein, will not have the effect to make a final decree in such case rendered upon an arbitration award, after the death of one of the parties, binding upon the executors appointed by the courts of another State and residing in such other State.
2. No such relation exists between an executor of a will in one State and an administrator with the will annexed for the same decedent appointed in another State, as to make a decree against the latter binding upon the former or upon the estate of the decedent in the former's possession.

Decided May 18, 1908.

IN ERROR to the Supreme Court of the State of Michigan. Affirmed.

Mr. JOHN MINER and Mr. HARRISON GEER for plaintiff in error.

Mr. HENRY M. CAMPBELL for defendant in error.

On April 24, 1874, a bill of complaint in a suit for an accounting was filed in the Supreme Judicial Court of Massachusetts, sitting in equity, against George N. Fletcher, of Detroit, Mich. The latter personally appeared and defended the suit. Without going into the details of the protracted litigation in Massachusetts, or showing how the plaintiff in error became at last the plaintiff in whose favor the Massachusetts court entered judgment, it is enough to say that on April 4, 1892, an agreement was made between the parties for submitting to arbitration all the claims and demands either party might have against the other; providing that the arbitration should be under rule of court, and that it should not operate as a discontinuance of the suit. It was further stipulated that the decease of either party should not terminate the submission, but that the arbitration should continue, and his successors and legal representatives should be bound by the final award therein. On October 18, 1893, the Hon. William L. Putnam was selected as arbitrator. On May 22, 1894, he filed a preliminary award. After this, and before a final award, Fletcher died, leaving a will, which was probated in the Probate Court of Wayne County, Mich. Letters testamentary were issued to his executors, citizens of Michigan, who qualified as such, and took possession of the decedent's estate in Michigan. His principal estate, as well as his domicile, was in Michigan, but he owned two small tracts in Massachusetts. The Probate Court of Middlesex County, Mass., by proceedings, regular in form, appointed Frank B. Cotton, a citizen of that State, administrator with the will annexed. The Massachusetts property was afterwards sold by that administrator for \$350.

After the death of Fletcher the principal suit was revived, the administrator entered his appearance therein, and an order was made by the

Massachusetts court that the executors and the children and residuary legatees of the decedent be notified to appear, and that in default thereof the arbitration proceed. They were notified by personal service of the order in the State of Michigan, but did not appear. The arbitration proceeded in their absence and a final award was made. It should also be stated that, on his death, Fletcher's counsel withdrew their appearance in the case. On April 14, 1908, the Massachusetts Supreme Judicial Court confirmed the awards of the arbitrator, and adjudged that Albert W. Brown recover from Frank B. Cotton, administrator with the will annexed, the sum of \$394,372.87 and \$4,495.85 as interest and the costs of suits, afterwards taxed as \$5,385.40. It was further adjudged and decreed that the Michigan executors of the last will were bound by the final award of the arbitrator, and liable to pay to Albert W. Brown the aforesaid sums; that the legal representatives of George N. Fletcher were likewise bound by the award and liable for any deficiency. Thereafter the decree of the Massachusetts court was filed in the Probate Court of Wayne County, Mich., as evidence of a claim against the estate. It was disallowed by that court, and, on appeal to the Supreme Court of Michigan, the disallowance was affirmed. 146 Mich., 401, 109 N. W., 686. Thereupon the case was brought here on error.

Mr. Justice Brewer delivered the opinion of the court: The Federal question presented is whether the Michigan courts gave force and effect to the first section of article 4 of the Federal Constitution, which provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." That this is a Federal question is not open to doubt. *Huntington v. Attrill*, 146 U. S., 657, 666, 36 L. ed., 1123, 1127, 13 Sup. Ct. Rep., 224, and cases cited.

The Constitutional provision does not preclude the courts of a State in which the judgment of a sister State is presented from inquiry as to the jurisdiction of the court by which the judgment was rendered. See the elaborate opinion by Mr. Justice Bradley, speaking for the court, in *Thompson v. Whitman*, 18 Wall., 457, 21 L. ed., 897. That opinion has been followed in many cases, among which may be named *Simmons v. Saul*, 138 U. S., 439, 448, 34 L. ed., 1054, 1059, 11 Sup. Ct. Rep., 369; *Reynolds v. Stockton*, 140 U. S., 254, 265, 35 L. ed., 464, 467, 11 Sup. Ct. Rep., 773; *Thormann v. Frame*, 176 U. S., 350, 44 L. ed., 500, 20 Sup. Ct. Rep., 446. Even record recitals of jurisdictional facts do not preclude oral testimony as to the existence of those facts. *Knowles v. Logansport Gaslight & Coke Co.*, 19 Wall., 58, 61, 22 L. ed., 70, 72; *Pennoyer v. Neff*, 95 U. S., 714, 730, 24 L. ed., 565, 571; *Cooper v. Newell*, 173 U. S., 555, 566, 43 L. ed., 808, 811, 19 Sup. Ct. Rep., 506.

Every State has exclusive jurisdiction over the property within its borders. *Overby v. Gordon*, 177 U. S., 214, 44 L. ed., 741, 20 Sup. Ct. Rep., 603. We make this extract from the opinion of Mr. Justice White in that case, p. 222:

"To quote the language of Mr. Justice Marshall, in *Rose v. Himley*, 4 Cranch, 241, 277, 2 L. ed., 608, 619: 'It is repugnant to every idea of a proceeding in rem to act against a thing which is not in the power of the sovereign under whose

authority the court proceeds; and no nation will admit that its property should be absolutely changed, while remaining in its own possession, by a sentence which is entirely *ex parte*."

"As said also in *Pennoyer v. Neff*, 95 U. S., 714, 722, 24 L. ed., 565, 568: 'Except as restrained and limited by the Constitution, the several States of the Union possess and exercise the authority of independent States; and two well-established principles of public law respecting the jurisdiction of an independent State over persons and property are applicable to them. One of these principles is, that every State possesses executive jurisdiction and sovereignty over persons and property within its territory. . . . The other principle of public law referred to follows from the one mentioned—that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.' Story, Conf. L., chap. 2; Wheaton, International Law, pt. 2, chap. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity, and incapable of binding such persons or property in any other tribunals.' Story, Conf. L., sec. 539.'"

Fletcher, at the time of his decease, was the owner of property, some of it situated in Massachusetts and some in Michigan. Each State had jurisdiction over the property within its limits, and could, in its own courts, in conformity with its laws, provide for the disposition thereof. Massachusetts exercised its jurisdiction over the property within its limits and disposed of it by legal proceedings in its courts. The contention now is that the proceedings in the Massachusetts court can be made operative to control the disposition of the property in Michigan. In support of this contention, counsel for plaintiff in error state two propositions:

"The Supreme Judicial Court in Equity for Suffolk County, Massachusetts, having had jurisdiction in Fletcher's lifetime over the subject-matter and the parties to the suit, and, on his death, the suit having been duly revived, the decree is conclusive evidence of debt in this proceeding.

"Fletcher's Michigan executors and the administrator with the will annexed of his estate in Massachusetts are in such privity that the decree is conclusive evidence of debt in this proceeding."

Considering first the latter proposition, we are of opinion that there is no such relation between the executor and an administrator with the will annexed, appointed in another State, as will make a decree against the latter binding upon the former, or the estate in his possession. While a judgment against a party may be conclusive, not merely against him, but also against those in privity with him, there is no privity between two administrators appointed in different States. *Vaughan v. Northup*, 15 Pet. 1, 10 L. ed., 639; *Aspden v. Nixon*, 4 How., 467, 11 L. ed., 1069; *Stacy v. Thrasher*, 6 How., 44, 12 L. ed., 337. In this latter case, on page 58, it was said:

"Where administrations are granted to different

persons in different States, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the other, to affect assets received by the latter in virtue of his own administration; for, in contemplation of law, there is no privity between him and the other administrator. See Story, Conf. L., sec. 522; *Brodie v. Bickley*, 2 Rawle, 431."

See, also, *McLean v. Meek*, 18 How., 16, 15 L. ed., 277; *Johnson v. Powers*, 139 U. S., 156, 35 L. ed., 112, 11 Sup. Ct. Rep., 525, in which the question is discussed at some length by Mr. Justice Gray. This doctrine was enforced in *Massachusetts (Low v. Bartlett)*, 8 Allen, 259, where a judgment had been recovered in Vermont against an ancillary administrator appointed in that State, whose appointment had been made at the request of the executor under the will probated in Massachusetts, and it was held that the administrator was not in privity with the executor, because the two were administering two separate and distinct estates; the court saying, p. 262:

"If we look at the question of privity between the executor here and the ancillary administrator in Vermont, it is difficult to find any valid ground on which such privity can rest. The executor derives his authority from the letters testamentary issued by the Probate Court here; he gives bond to that court; is accountable to it for all proceedings; makes his final settlement in it, and is discharged by it, in conformity with the statutes of this Commonwealth. The administrator derives his authority from the Probate Court in Vermont, and is accountable to it in the same manner in which the executor is accountable to our court. The authority of the executor does not extend to the property there, nor to the doings of the administrator. Nor does the authority of the administrator extend to the property here, or to the doings of the executor. When the plaintiff commenced his suit against the administrator, the executor had no right to go there and defend it. If he had been found in Vermont, he could not have been sued there. The judgment rendered in the suit was not against him, or against the testator's goods in his hands, but was simply against the administrator and the testator's goods in his hands. The courts of Vermont had no jurisdiction of the executor or of the goods in his hands, any more than our courts would have over the administrator and the goods in his hands. It is this limitation of State jurisdiction that creates a necessity for an administration in every State where a deceased person leaves property; and each State regulates for itself exclusively the manner in which the estate found within its limits shall be settled."

The Massachusetts statutes proceed along this line. Secs. 10, 11, and 12, chap. 136, Mass. Rev. Laws, 1902, provide for the probate of foreign wills in Massachusetts. Section 12 reads:

"After allowing a will under the provisions of the two preceding sections, the Probate Court shall grant letters testamentary on such will, or letters of administration with the will annexed, and shall proceed in the settlement of the estate which may be found in this Commonwealth in the manner provided in chap. 143, relative to such estates."

With reference to the first contention of counsel, we remark that, while the original suit against

Fletcher in the Massachusetts court was revived after his death, yet the revivor was operative only against the administrator with the will annexed. Neither the executors nor the residuary legatees were made parties, for it is elementary that service of process outside of the limits of the State is not operative to bring the party served within the jurisdiction of the court ordering the process. Such, also, is the statutory provision in Massachusetts. Sec. 1, chap. 170, Mass. Rev. Laws, 1902, reads:

"A personal action shall not be maintained against a person who is not an inhabitant of this Commonwealth unless he has been served with process within this Commonwealth, or unless an effectual attachment of his property within this Commonwealth has been made upon the original writ; and, in case of such attachment without such service, the judgment shall be valid to secure the application of the property so attached to the satisfaction of the judgment, and not otherwise."

The Massachusetts court, therefore proceeded without any personal jurisdiction over the executors and legatees, who were all domiciled in Michigan, did not appear, and were not validly served with process.

The argument of plaintiff in error is that, by personal appearance during his lifetime, the Massachusetts court acquired jurisdiction of the suit in equity against Fletcher; that his death prior to a decree did not abate the suit, but only temporarily suspended it until his representative should be made a party; that, if a decree had been rendered against him in his lifetime, it would have established, both against himself, and, after his death, against his estate, whatever of liability was decreed; that while the suit was pending, the parties entered into a stipulation for an arbitration; that that arbitration did not abate, nor was it outside the suit, but, in terms, made under rule of court, and not to operate as a discontinuance of the suit. Provision was also made in the stipulation for the contingency of death, its terms being "that the decease of any party shall not revoke said submission, but that said arbitration shall continue, and that . . . the legal representatives of said Brown and said Fletcher shall be bound by the final award therein;" so that there is not merely the equity rule that a suit in equity does not abate by the death of the defendant, and that the jurisdiction of the court is only suspended until such time as the proper representatives of the deceased are made parties defendant, but also a special agreement in the submission to arbitration that it shall be made under a rule of court, and that the death of either party shall not terminate the arbitration proceedings, but that they shall continue until the final award. It is urged that, on the death, a revivor was ordered; that the representative of the decedent's estate in Massachusetts, to wit, the administrator, was made a party defendant and appeared to the suit, and notice was given by personal service upon the executors and legatees in Michigan of the fact of the revivor, and that they were called upon to appear and defend.

But it must be borne in mind that this arbitration was made under a rule of court. Not only that, but special provision was made for the action of the court in deciding questions of law arising upon the report of the arbitrator, so that the arbitra-

tion was not an outside and independent proceeding, but simply one had in court, for the purpose of facilitating the disposition of the case. And we may remark in passing that we do not have before us the case of a simple arbitration contract, executed independently of judicial proceedings, and express no opinion as to the rights and remedies of one party thereto in case of the death of the other. The validity of the decree must depend upon the proceedings subsequent to the death of Fletcher. On his death the jurisdiction of the Massachusetts court was not wholly destroyed, but suspended until the proper representative of Fletcher was made a party. The Massachusetts administrator was made a party and did appear, and the decree rendered unquestionably bound him; but the executors, the domiciliary representatives of the decedent's estate, did not appear, and were not brought into court. The Massachusetts administrator was not a general representative of the estate, and could not bind it by any appearance or action other than in respect to the property in his custody. If the home estate was to be reached, it had to be reached by proceedings to which the home representatives were parties. The agreement of the parties that the arbitration should continue in case of the death of either, and that the legal representatives of the party should be bound by the final award, was an agreement made in the course of judicial proceedings of the suit in the Massachusetts court. It did not operate to make the home representatives of the decedent parties to the suit on the death of Fletcher. It did not bring his general estate into court. We concur in the views expressed by the Supreme Court of Michigan in the close of its opinion that:

"It must be held that the proceeding in the Massachusetts court abated with the death of Mr. Fletcher, that its revival was possible only because there was brought into existence, by the exercise of the sovereign power of the State, a representative of the decedent, clothed with certain powers with respect to the estate of decedent within the State, and that the decree thereafter rendered in the suit so revived is without effect save upon the administrator of the estate, who was, in accordance with the law of the place, brought upon the record."

We are of opinion that the Supreme Court of Michigan did not fail to give "full faith and credit" to the decree of the Massachusetts Supreme Court, and therefore the judgment is affirmed.

**Landlord and Tenant; Construction of Lease; Provision for Termination in Case of Injury by Fire.**

[New York Law Journal]

In *Levy v. Equitable Life Assur. Soc'y*, in the United States Circuit Court of Appeals, Sixth Circuit (May, 1908, 161 Fed., 283), it appeared that a lease for a room in a six-story building provided that if the "building or premises wherein said demised premises are contained" should be destroyed by fire or so badly injured that they could not be repaired within sixty days, the lease should terminate; but if said premises, "having been injured as aforesaid," should be repairable within sixty days, the lessor should repair with all reasonable speed, and the rent should cease during the time of making repairs, and that, if so slightly injured as not to be rendered unfit for occupancy, they

should be repaired and the rent should not cease. It was held that such provisions applied to the entire building, and that on an injury to the building by fire which could not be repaired within sixty days, the lessor was entitled to terminate the lease, although the demised portion was only slightly injured and not rendered unfit for occupancy. The court said in part:

"The allegations of the declaration concerning the contents and provisions of the two lease contracts made and entered into between the Equitable Society and the plaintiffs were admitted by the latter in its plea to be correct. The charge of the court was based upon the statement of the declaration referred to, which is as follows:

"Both of said leases provide that if during the term thereof the building or premises wherein said demised premises are contained shall be destroyed by fire, or the elements, or be so badly injured that they cannot be repaired within sixty days from the happening of such injury, then said lessees shall immediately surrender said premises and all interest therein to the defendant. And both of said leases further provide that in case of destruction or partial destruction of said building, as aforesaid, the defendant, as lessor, may reenter and repossess said premises; but if said premises, having been injured, as aforesaid, shall be repairable within sixty days from the happening of such injury, then the rent shall not run or accrue after such injury or while the process of repairing is going on, and defendant, as lessor, shall repair the premises with all reasonable speed and the rent shall recommence immediately after such repairs shall be completed; and if said premises shall be so slightly injured by fire or the elements as not to be rendered unfit for occupancy, then said lessor agrees that the same shall be repaired with reasonable promptitude, and in that case the rent accrued or accruing shall not cease or terminate."

"It was the contention of the plaintiffs that these leases provided that, if the demised premises should be so badly injured that they could not be repaired within sixty days after the fire, the lessees should immediately surrender the same. But if the demised premises should be repairable within sixty days, then the rent should not accrue after the injury, or while the work of repairing was going on. The lessor should repair the premises with all reasonable speed, and rent should recommence immediately after such repairs should be completed; and, if the demised premises should be so slightly injured as not to render the same unfit for occupancy, then the same should be repaired with all reasonable promptitude, and in that case the rent accrued or accruing should not cease or terminate. In other words, the plaintiffs contended that the provisions of the lease or leases respecting the demised premises related to them alone, and not to the building as an entirety. The character of the injury done by the fire was to be determined with reference to the demised premises alone, without regard to the building in which they were contained. If the demised premises should be repairable in sixty days from the fire, or if the demised premises should be so slightly injured as not to be rendered unfit for occupancy, in either case the lessor should repair the premises with all reasonable speed. In the first case the rent should not accrue while the premises were undergoing repairs; and, in the second

case, the rent should not cease or terminate.

"The whole case turns upon the construction of these provisions of the leases as set forth in the declaration. The court recognized this, and instructed the jury that if they believed from the testimony that the building could not have been repaired within sixty days, but that it would require more than sixty days to have repaired it and placed it substantially in the condition it was in before the fire, then their verdict should be in favor of the defendant. Asked at the close of the charge what he meant by the expression 'building,' the court said: 'I mean the Equitable Building.' And then, questioned by counsel, 'As a whole?' the court replied: 'As a whole; from cellar to garret.'

"To make explicit its position with regard to the construction of the provisions of the written leases as set out in the declaration, the court declined to charge the jury: (1) That the provisions for the termination of the leases on account of damage by fire means damage for injury repairable within sixty days to the part of the Equitable Building embraced in said leases without reference to the time required for repairing other parts of the building; (2) If you find that by the fire which occurred in said building on February 21, 1906, the part thereof demised by said lease was not injured, or was injured and the damage was repairable within sixty days from the time of the fire, then such damage did not operate to give the defendant the right to end both or either of said leases; (3) And the foregoing second instruction is applicable, even though it might have required more than sixty days from the time of the fire to have repaired other parts of the building than those covered by the lease, unless it was necessary in the repairing of such other parts to include the said leased premises in the work of repair that would take more than sixty days from the time of the fire to accomplish.

"We think the court was quite right in taking the view it did of the provisions of the leases as set out in the declaration. It seems clear to us that the opening provision related to the destruction or damage by fire of the entire building described as 'the building of premises wherein said demised premises are contained.' It is provided that if these shall be destroyed by fire, or the elements, or be so badly injured that they can not be repaired within sixty days from the happening of said injury, then said lessees shall immediately surrender said premises and all interest therein to the defendant. This reading seems clear beyond controversy. An attempt is made to throw doubt upon its meaning by commenting on the succeeding provisions. But we think a careful reading of them makes their meaning plain. The declaration provides: 'And both of said leases further provide that in case of destruction or partial destruction of said building, as aforesaid [observe that the reference is to the "building," meaning the entire premises "wherein said demised premises are contained"].' The defendant, as lessor, may reenter and repossess said premises [meaning evidently the demised premises]; 'but if said premises, having been injured, as aforesaid [clearly referring to the entire building, the destruction or injury of which is the subject of the first provision], shall be repairable within sixty days from the happening of such injury, then the rent shall not run or accrue after such injury, or while the process of

repairing is going on, and the defendant as lessor, shall repair the premises with all reasonable speed, etc. There is room for argument that each lease should stand by itself, and that each part of the building should be considered as a unit in determining the effect of the injury caused by a fire on the lease which covers it. As a matter of policy there are arguments on both sides. It may be very impolitic to allow a lease to run simply because the room covered by it is substantially uninjured, although more than half the building has been destroyed and will have to be rebuilt. But, after all, the question is not what the lease ought to be, but what it is, and that must be determined by a construction of the provisions of the leases as set forth in the declaration. For the reasons we have given, we think the court below was correct in the construction it gave in its charge to the jury."

**Corporations; Incorporation of Existing Business; Assumption of Debts.**

In *Curtis, Jones & Co. v. Smelter Nat. Bank*, in the Supreme Court of Colorado (June, 1908, 96 Pac., 172), it was held that where an individual carrying on business organized a corporation to continue the same, and after transferring the business to the corporation in exchange for stock, as president, manager, and principal stockholder, carried on the same business in the corporate name, the books kept in his private business being continued as the books of the company, so that there was merely a change from doing business in one capacity to that of the other, the corporation became presumptively liable for the pre-existing debts of the business, without an express agreement to assume the same, and therefore properly executed its note to a bank in exchange for the bank's note of the individual, given to secure money used in such business. The court said in part:

"It can not be denied that the shoe company attempted to assume and pay the individual indebtedness of Chase to the bank, as well as all other indebtedness incurred by him in the conduct of the business which the corporation succeeded to. As a part of the transaction, it executed the company's note in lieu of the individual note of Chase, and assumed and paid the debts of two of the appellants. Its right to bind itself by an express promise to do so is recognized by all the authorities. In 10 Cyc., 1111, subdivision 'd,' the rule is thus stated: 'Where a partnership is incorporated, and the corporation takes over the assets and the business of the partnership, the corporation has power to assume the debts of the partnership; and the rule is the same where a corporation takes over the business of an individual.' And in its support cases are cited from Connecticut, Canada, California, Iowa, Massachusetts, Pennsylvania, and Wisconsin. As we understand counsel for appellants, they do not question this rule, but insist that there must be an express verbal or written agreement to evidence the intention or understanding, on the part of the corporation, to assume such debts. *Durlacher v. Frazer* (8 Wyo., 58, 55 Pac., 306, 80 Am. St. Rep., 918), supports this contention, but we think the better reason, as well as the weight of authority, is to the effect that when the business and assets are bodily swept into the

corporation, and the same business is continued under the new name, the presumption and inference are that the debts are assumed. *Bremen Sav. Bank v. Branch-Crookes Saw Co.*, 104 Mo., 425, 16 S. W., 209. On page 346, volume 1, *Clark and Marshall on Private Corporations*, the author states the rule as follows: 'When a corporation, formed by and consisting of the members of a partnership, takes a conveyance or assignment of all the assets of the partnership for the purpose of continuing the business, it is to be presumed that it has assumed the partnership debts, and it is prima facie liable therefor.' *Reed Bros. Co. v. First Nat. Bank of Weeping Water*, 46 Neb., 168, 64 N. W., 701; *Hall v. Herter Bros.*, 90 Hun, N. Y., 280, 35 N. Y. Supp., 769; *id.*, 157 N. Y., 694, 51 N. E., 1091; *Williams v. Colby*, 53 Hun, N. Y., 637, 6 N. Y. Supp., 459; *Andres v. Morgan*, 62 Ohio St., 236, 56 N. E., 875, 78 Am. St. Rep., 712; *Beach on the Law of Private Corporations*, sec. 860.

"In *Austin v. Tecumseh Nat. Bank* (49 Neb., 412, 68 N. W., 628, 35 L. R. A., 444, 59 Am. St. Rep., 543), Post, C. J., challenge the strict accuracy of this statement in view of the omission thereof of any reference to the purpose or character of the transaction contemplated, or the consideration therefor. He said: 'We shall not attempt a review of the cases cited in the note accompanying the foregoing text, or in the briefs submitted herewith. It is sufficient that they may, in our judgement, be thus classified: (1) Cases in which the liability of the new corporation results not from the operation of law, but from its contract relation with the old; (2) cases, like *Hibernia Ins. Co. v. St. Louis & N. O. Transp. Co.* (C. C., 13 Fed., 516), in which the transfer of the property and franchise amounts to a fraud upon the creditors of the old corporation; (3) cases where, as in *Reed v. Bank* (supra), the circumstances attending the creation of the new corporation and its succession to the business, franchise, and property of the old, are such as to raise the presumption or warrant the finding that it is a mere continuation of the former; that it is, in short, the same corporate body under a different name. And the facts upon which such finding or presumption depends will not be presumed, but should affirmatively appear from the pleadings and proofs.' The case under consideration comes clearly within the third subdivision. Chase was carrying on the business as an individual. After the transfer, he, as president, manager, and principal stockholder, carried on the same business in the corporate name. The books kept in his private business were continued as the books of the company. There was simply a change from doing the business in one capacity to that of another.

"As was said in *Andres v. Morgan* (supra), a case very like in its facts to this case: 'All that the corporation paid for the property transferred to it was the stock issued in exchange, simply a metamorphosis of a partnership into a corporation, without any change of individuals; and, unless it assumed the payment of the debts of the firm, there was no consideration for the transfer of the property, for the stock without the property represented nothing and was worth nothing. That a corporation could be formed and, with its capital, purchase a partnership and its business without being liable for its debts, unless expressly



assumed is not doubted; but this is not such a case.' This is like the case of *Reed Brothers Co. v. First Nat. Bank* (46 Neb., 168, 64 N. W., 701), where a partnership, engaged in a general mercantile business, in straitened and failing circumstances, incorporated, and the assets and business of the partnership were transferred to the corporation, and appropriated to its object and purpose, the business of the partnership being continued by the corporation, and where it was held that the corporation was presumptively liable for the partnership debts (see 2 *Cook on Stockholders*, sec. 669, and note 3; *Mor. Corp'n.*, secs. 791, 812; *Broughton v. Pensacola*, 93 U. S., 266-270, 23 L. Ed., 896; *Beach on Priv. Corp'n.*, sec. 360). 'There was, in fact, no purchase in this case. It, as shown, was simply a change from doing business in one capacity to that of another, the same persons changed from partners to copartners, and this distinction reconciles many cases on the subject that might otherwise seem in conflict.' In the circumstances of this case, therefore, it is immaterial whether the evidence discloses an express agreement on the part of the corporation to assume the debts of Chase incurred in his individual capacity, in the identical business to which it succeeded. It was at least presumptively liable therefor, and the payment of all other claims of its then creditors, and the execution of its note to the bank in lieu of the individual note of Chase, was a recognition of its legal obligation to pay these debts, and of its agreement so to do, and confirms the statement of the witness McConnell that he knew the purpose was 'that all of Chase's assets were to go into the new company, and, of course, the liabilities followed.'"

#### Injunction; Breach of Covenant; Defenses; Laches.

In *Daly v. Foss et al.*, in the Supreme Judicial Court of Massachusetts (May, 1908, 85 N. E., 94) it appeared that defendant purchased certain land, the deed being one of a number from a common grantor containing a restrictive covenant prohibiting offensive business from being carried on thereon, and, knowing such restrictions, defendant rushed the work of erecting a garage in the hope that if he completed it he would not be enjoined, and abstained from ascertaining whether other owners on the street objected, so that he would be in a better legal position than if objections were made known to him, and fearing that if he asked questions objections would be made. A suit was pending by another owner holding under a deed similar to petitioner to enjoin him from erecting the building, that suit resting on the same state of facts as the present suit; and when defendant later bought out such owner he had the deed made in the name of a third person and withheld it from record for over two months, hoping thereby to prevent objections from other owners. It was held that petitioner's delay in bringing suit until the pending suit by the other owner, who held under a similar deed, was decided, when considered in connection with defendant's conduct in pushing the erection of the building before objections could be made, was not such laches as would estop petitioner to enjoin defendant from erecting the building. The court said in part:

"The principal ground on which the defense of

laches is sustained by the court is that it would be unfair to a defendant to wait a long time while he is making his arrangements and adjusting his business and property to conditions which he has reason to believe will be permanent, because he deems them either in conformity with law or satisfactory to others, and then to make an attack upon him and require him to undo that which he has done innocently and at great cost. The reason for sustaining this kind of defense is similar to that on which the doctrine of estoppel depends, although it does not require that a technical estoppel be shown.

"In the present case the plaintiffs had rights like those of Evans in his suit. Their rights depended upon the same deeds and the same facts. Evans alleged that the defendant Foss was violating these rights, and brought a suit to enjoin him. The decision in his case would show what decision should be made in the cases of these plaintiffs. If there were fifty other landowners whose rights were the same as his, all of whom knew that a case was pending between him and Foss to determine these disputed rights, it would be unreasonable to hold that each one of them must prosecute an independent suit with promptness, at the peril of losing by laches rights that were secured to him permanently by a deed. *Edison Electric Light Co. v. Sawyer-Man Electric Co.*, 53 Fed., 592, 3 C. C. A., 606; *United States Mitis Co. v. Detroit Steel & Spring Co.*, 122 Fed., 863, 59 C. C. A., 589; *Linzee v. Mixer*, 101 Mass., 512; *Attorney-General v. Gardiner*, 117 Mass., 492; *Attorney-General v. Algonquin Club*, 153 Mass., 447, 27 N. E., 2, 11 L. R. A., 500; *Radenhurst v. Coate*, 6 Grant, ch. 139; *West Arlington Improvement Co. v. Mt. Hope Retreat*, 97 Md. 191-205, 54 Atl. 982; *Proctor v. Bennis*, 36 Ch. Div., 740-760; *Ramsden v. Dyson*, L.R., 1, H. L. 129-168; 18 Am & Eng. Enc. of Law, 2d ed., 105. Such landowners well might be influenced in their conduct by knowledge that the defendant knew their rights to be the same as those of Evans, and that a decision in favor of Evans would show his violation of their rights in the same way.

"The presiding justice has found that the defendant Foss was not misled by the conduct of these plaintiffs into the belief that they and others similarly situated acquiesced in what he was doing. He has found that the defendant was not acting in good faith in reference to the rights of the plaintiffs, but was pushing forward the erection of the garage with the intention of buying Evans' land if he should be unsuccessful in the suit with Evans, in the hope that if he completed the garage before other householders made objections he would not be enjoined by the court from using it as a garage. The judge further found that he abstained from ascertaining whether other house owners on the street objected, because he thought he would stand better in this respect than if he made inquiry and was told that there were objections, and that in fact he feared that if he asked questions objections would be made. He also found that, later, he bought Evans' house and caused the deed to be taken in the name of his clerk instead of himself, in part for the purpose of concealing the purchase from the owners of other houses on the street, and that for the same purpose he withheld the deed from record in the registry for more than two months, feeling that if other owners knew of the purchase they would

make objections, while if they did not know it they would take no action. All this was done in the hope that if objections were made, the later they were made the better would be his position in reference to proceedings to enjoin him from using the building as a garage.

"Upon these findings we are of opinion that there was no laches of which the defendant Foss can avail himself in these suits. He has lost nothing by reason of the failure of the plaintiffs to take earlier proceedings for the enforcement of their rights. There was no such delay as, on general principles, should move a court of equity to refuse relief.

"We do not mean that a party having rights can rely indefinitely upon a suit of another person to enforce a similar right and can postpone unreasonably the assertion of his own rights in such a way as to lead others to action, to their detriment, in a belief that he does not desire or intend to enforce them. But in determining whether he was guilty of negligence in failing to assert his rights promptly, the fact that the defendant knew of the existence of his rights through another person's assertion of similar rights depending on the same facts may well be considered important.

"Kent v. Dunham (14 Gray, 279) differs materially from this case. The decision in that case was that one desiring to take an appeal from a decree of a probate court can not rely upon an appeal taken by another person, but if he wishes to save his rights must appeal seasonably in his own name. His right to appeal is defined by the statute and it has no existence after the expiration of the time prescribed. The rights in the present cases were created by deeds, and the question is whether the plaintiffs by reason of negligence have lost the opportunity of enforcing them."

**Landlord and Tenant; Injury to Tenant; Placing Mat in Common Passageway; Lighting Common Passageway.**

In McGowan v. Monahan, in the Supreme Judicial Court of Massachusetts, Suffolk (June, 1908, 85 N. E. Rep., 105), it was held that in the absence of an agreement on the part of the landlord with the tenant of one of several tenements in a building to light a common passageway, his duty to her was to keep it in the condition it was in, or apparently in, at the date of the lease, so that she can not complain because it was dark when she fell over a mat therein.

It was further held that for the landlord, who occupies one of the tenements in his building, to place without warning an ordinary mat on a narrow landing in the common passageway before the outer door of his tenement, when by the terms of the contract under which a tenant used such passageway it was not to be lighted, was not negligence so as to make the landlord liable for injury to the tenant from tripping and falling over the mat. The court said:

"The most that the jury were warranted in finding was that the plaintiff tripped and fell over an ordinary mat in front of the defendant's outer door as she was going down stairs in the dark hours of the morning through the unlighted common passageway of the tenement house in question.

"The plaintiff was the lessee of the tenement

next above that occupied by the defendant. The defendant was the owner of the building and the plaintiff's landlord as well as the occupant of the tenement next below that of the plaintiff.

"It should be added that it could have been found that the mat had been put in front of the defendant's door the night before, without warning having been given of its presence, and that the space between the outer side of the mat and the balusters on the edge of the landing was not a wide one. How narrow it was did not appear. Neither did it appear how the plaintiff happened to trip. All that appeared in addition was that the plaintiff was allowed to testify without objection that her daughter examined the mat immediately after the accident and said that it 'was turned out of place.'

"We do not think that the ruling can be justified on the ground that there was no evidence that the defendant placed the mat or caused it to be placed in front of his outer door. The mat was spoken of by the plaintiff as the defendant's mat without objection on his part. The fact that it was his mat, coupled with the fact that it was in front of his outer door, warranted the finding that he put it there or caused it to be put there.

"There was no evidence of an agreement on the part of the defendant to light the common passageway. In the absence of such an agreement the defendant's duty to the plaintiff consisted in keeping the common passageway in the condition it was in or apparently in at the date of the lease of the plaintiff's tenement to her. See, in this connection, Miles v. Janvrin (Mass.), 82 N. E., 708; Andrews v. Williamson, 193 Mass., 92, 78 N. E., 737; Miller v. Hancock, 1893, 2 Q. B., 177. The plaintiff can not complain that the passageway was dark at the time of the accident. Jordan v. Sullivan, 181 Mass., 348, 63 N. E., 909; Dean v. Murphy, 169 Mass., 413, 48 N. E., 283.

"The case at bar therefore resolves itself into a question whether it is an act of negligence to put an ordinary mat before the outer door of a tenement, on a narrow landing which is part of a common passageway, where, by the terms of the contract under which the plaintiff used that common passageway, it was not to be lighted throughout the night. Placing a mat in a common passageway before the outer door of a tenement leading out of it is, as matter of common experience, usual and ordinary, and is a thing which all using the passageway must be taken to expect, and no warning is necessary when it is first done. In principle the question is not unlike that decided in Jennings v. Tompkins, 180 Mass., 302, 62 N. E., 265. The case of Toland v. Paine Furniture Co. (179 Mass., 501, 61 N. E., 52), is much relied on by the plaintiff. But there the plaintiff was invited on the defendant's premises on business. In such a case the defendant was bound to make them safe by lighting them properly, and there was evidence that they were not properly lighted. Further, there was evidence in that case that the rubber mat over which the plaintiff tripped was curled up on the edge where she tripped, and nailed down on each side, making the place an unsafe one."

**Master and Servant—Contributory Negligence.**—A locomotive fireman is not a fellow servant with the superintendent of construction and the foreman of a bridge gang. McCabe & Steen Const. Co. v. Wilson, U. S. S. C., 23 Sup. Ct. Rep., 558.

**The Ethics of Advocacy.**  
[London Law Journal.]

Of more than usual interest to the English lawyer will be the forthcoming meeting of the American Bar Association. A committee of the association has drafted what purports to be a complete code of professional ethics, and the discussion of these proposed canons, which are thirty-two in number, will be the main business of the meeting.

One of the draft rules is quite inconsistent with the traditions of the English Bar. "A lawyer may counsel and maintain only such actions and proceedings as appear to him just. His appearance in court should be deemed equivalent to an assertion, on his honor, that in his opinion his client is justly entitled to some measure of relief."

The observance of such a regulation would, of course, be quite incompatible with the impersonality that belongs to the English advocate. "A man's rights," said Lord Bramwell, "are to be determined by the court, not by his advocate or counsel. It is for want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. A client is entitled to say to his counsel, 'I want your advocacy, not your judgment; I prefer that of the court.'"

Lord Halsbury has expressed a similar view. He has described the contention that "an advocate is bound to convince himself by something like an original investigation that his client is in the right before he undertakes the duty of acting for him," as "ridiculous, impossible of performance, and calculated to lead to great injustice."

The rule that an advocate ought not to express his personal opinion in a criminal case has often been insisted upon. Sergeant Shee's expression of belief in the innocence of Palmer, the Rugeley poisoner, drew a strong protest from Sir Alexander Cockburn, who remarked that the counsel for the defense had better have abstained from making any observations which involved the assurance of his own conviction.

Johnson, when asked by Boswell whether a lawyer ought to support a cause which he knew to be bad, replied: "Sir, do you know it to be good or bad till the judge determines it." That is really the conclusion of the matter. Much injustice would be done if the character and eminence of a counsel were always to be regarded in determining the justice of his client's cause, and this would be the inevitable result of the rule which the American Law Association is to be asked to adopt.

**Master and Servant—Care Required in Selecting Servants.**—The duty of using ordinary care in the selection of servants is one personal to the master; and failure to use such care to discover incompetency is a breach of duty, and, if it be the proximate cause of injury to another servant the master is liable. *El Paso & S. W. Ry. Co. v. Smith* (Tex.), 108 S. W. Rep., 988.

**Master and Servant—Operation of Trains.**—An employee of a railroad company in charge of a train about to cross the tracks of another company may presume that the employees of the latter company in control of an approaching engine will obey the law, and stop before reaching the crossing. *El Paso & S. W. Ry. Co. v. Murtile* (Tex.), 108 S. W. Rep., 998.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.**

**FIRST INSERTION.**

William K. Quinter, Solicitor

In the Supreme Court of the District of Columbia,  
John J. Hogan, Complainant, v. Charles H. Swan  
et al., Defendants. Equity. No. 27,987.

The object of this suit is to establish title in the complainant by adverse possession to part of original lot 4, in square 280, in the city of Washington, District of Columbia, beginning for the same at the northeast corner of said lot and running thence south 70 feet 6 inches; thence west 11 feet 8 1/2 inches, more or less, to center of a party wall; thence northerly along the center of said party wall 70 feet 6 inches to the rear line of original lot 4; thence east along said rear line to the place of beginning. On motion of the complainant, it is, this 2d day of September, 1908, ordered that the defendants, Charles H. Swan, trustee under the last will and testament of Ellen M. Washburn, deceased; New England Hospital for Women and Children, a corporation; Charles H. Swan, executor under the last will and testament of Laura M. Moore, deceased; John L. Barnard, Mary C. E. Barnard, Caroline A. Sayward, William W. Swan, and Charles H. Swan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. WENDELL P. STAFFORD, Justice.  
[Seal] True copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 86-3t

John E. Taylor, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Torrey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1908. ADAH S. TORREY, 3014 11th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,471. Administration. [Seal.] 86-3t

Jas. L. McNeill, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Dora B. Sims, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of September, 1908. JOHN SIMS, U. S. Senator. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,324. Administration. [Seal.] 86-3t

**Legal Notices.**

Edwin L. Wilson, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.Estate of Annie V. Brown, Deceased.  
No. 15,460. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William J. Brown, it is ordered this 1st day of September, A. D. 1908, that Mary E. League, Michael P. Coakley, William Coakley, James J. Coakley, and Daniel Coakley, and all others concerned, appear in said court on Monday, the 5th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest:  
Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

36-37

W. Lee Helms, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.Estate of Reinhold F. de Grain, Deceased.  
No. 15,466. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Maria de Grain, widow of said Reinhold F. de Grain, it is ordered, this 2d day of September, A. D. 1908, that Clara de Grain, Emma de Grain, Annie de Grain, Eliza de Grain, Edward de Grain, and all others concerned, appear in said court on Monday, the 5th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

36-37

J. J. Darlington and Leon Tobriner, Attorneys

Supreme Court of the District of Columbia,  
Holding a Probate Court.In re Christiana Strauss, Deceased.  
Adm. No. 15,235.

Application having been made for the probate of the last will and testament of said deceased, and for letters testamentary on said estate by Hugh A. Kane, the executor therein named, it is ordered this 28th day of August, A. D. 1908, that Leo Siebel, and all others concerned, appear in said court on Monday, the 28th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] By the Court: WENDALL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

36-37

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Helge G. Forsberg, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 21st day of September, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 1st day of September, 1908. GUSTAVE W. FORSBERG, 8th and Water sts. S. W., by Edward A. Newman, Attorney. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,908. Administration. [Seal.]

36-37

**Legal Notices.**

Edwin L. Wilson, Attorney

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.Edwin L. Wilson v. Samuel Elliot, Junior, et al.  
Equity. No. 27,976.

The object of this suit is to establish title to the north 100 feet of lots 20, 21, and 22, by the full width thereof, and all of lots 23 and 24, in square 388, in the city of Washington, District of Columbia, to be good in fee simple in complainant by reason of adverse possession thereof for more twenty years. On motion of the complainant, it is this 2d day of September, A. D., 1908, ordered that the defendants, Samuel Elliot, Junior, Thomas Bulfinch, Harriet A. Deming, Thomas W. Pairo, and Buckner Bayless, if living, or, if any of said defendants be dead, the unknown heirs, allenees, and devisees, if any, of those who are dead, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of two months from this date, good cause for fixing such time having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks for the first month, and twice a month for the second and succeeding month thereof in The Washington Law Reporter

[Seal] and The Washington Herald. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by Wm. F. Lemon, Asst. Clerk. sept 4, 11, 18; oct 4, 11; nov 4, 11

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia.  
Charles J. Bell, James R. Garfield, Complainants, v.  
Charles Oram Lander Young et al., Defendants.

In Equity. No. 27,762.

The object of this suit is to require the defendants to interplead and settle their rights and conflicting claims to a legacy of \$18,000 bequeathed to the defendant, Charles O. L. Young, by the will of the late Jean M. D. Lander (duly admitted to probate by the Probate Court of this District), and to the securities set apart by the executors and trustees of said will, the complainants in this suit, in satisfaction thereof, and to the unpaid income arising from said legacy and said securities, and to all interest therein and thereunder, and to permit the complainants to pay and deposit in the registry of this court all cash in their hands arising from said legacy and securities and the securities themselves, and that the defendants and each of them may be enjoined and restrained from commencing any suits either at law or in equity against the complainants touching said matters and upon the payment of said money and the deposit of said securities in the registry of this court by the complainants, and upon their procuring said defendants to interplead, said complainants may be discharged from all liability to said defendants or either of them in the premises, and that said complainants may have their costs herein. On motion of complainants it is this 31st day of August, 1908, ordered that the defendants, Charles Oram Lander Young, Charles Chandos Weatherley, Abraham Bolland, Lillian Frances Martha Bridge, Reginald C. Hassett, and Henry William Henniker Rance, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk.

36-37

Leo P. Harlan, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel J. Bragunier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of September, 1908. JOHN D. BRAGUNIER, 411 M st. N. E. Attest: Wm. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,243. Administration. [Seal.]

36-37

**Legal Notices.**

Ralston &amp; Siddons, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marion S. F. Jouy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of August, 1908. FRED'K L. SIDDONS, Bond Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,425. Administration. [Seal.] 36-St

**SECOND INSERTION.**

Alex. H. Bell, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Eugene Sweeney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1908. DANIEL J. SULLIVAN, 725 Va. ave. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,466. Administration. [Seal.] 35-St

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.  
Julia Ten Eyck McBlair et al. v. George F. Green et al.  
No. 27,887. Equity Doc. —

The object of this suit is to declare complainants' title perfect, by adverse possession, to original lots numbered eight (8) and eleven (11) in square numbered seventy-eight (78), Washington, District of Columbia, as described in the bill. On motion of the complainants, it is, this 28th day of August, A. D. 1908, ordered that the defendants, Mary I. Lewis, Alice Q. Bruce, Rousby Quisimbury, Belle P. Quisimbury, Emma L. Quisimbury, Emma Rose Quisimbury, Eastmon P. Green, Essie C. Gandell, John W. Sykes, Mary Sykes Findley, Daniel P. Wirt, Augusta Wirt Nalle, Forrest Tayloe, and Louisa D. Tayloe, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and allies of Charles Gilchrist, John Hewitt, Uriah Forrest, Rebecca Forrest, George Forrest, Benjamin S. Forrest, Ann Green, Maria Tayloe Bohrer, Maria G. Devereux, Rebecca Ann Green or Ann Rebecca Green, Elizabeth E. Quisimbury, Alice G. de Yturbe, Osceola C. Green, Nicholas Quisimbury, John Tayloe, 3d, John Tayloe, 4th, Maria Tayloe Sykes, Catherine Tayloe Wirt, and of each of them, cause their appearance to be entered herein on or before the first rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, for the first month, and twice a month for the two succeeding months

[Seal] In The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 28; sept. 4, 11; oct. 2, 9; nov. 6, 13

G. Percy McGlue, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth Gallagher, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of August, 1908. JAMES F. SHEA, 648 La. ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,326. Administration. [Seal.] 35-St

**Legal Notices.**

Nelson Wilson, Attorney

In the Supreme Court of the District of Columbia.  
Sampson P. Bayly, Jr., Complainant, v. Mary L. Turner, John S. Whitt, Trustee, Defendants.  
Equity No. 27,408.

The object of this suit is to appoint a new trustee in the place of John S. Whitt in a deed of trust executed by Mary L. Turner. On motion of the complainant, Sampson P. Bayly, Jr., by Nelson Wilson, his attorney, it is this 25th day of August, A. D. 1908, ordered that the defendant, John S. Whitt, trustee, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter and The Evening Star before said day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 35-St

P. R. Hillard, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Patrick Reddington,  
Deceased. No. 15,087.

Upon consideration of the report and petition of Bridget Durken, administratrix c. t. a. of the estate of Patrick Reddington, deceased, filed herein the 25th day of August, 1908, it is by the court this 26th day of August, 1908, adjudged, ordered and decreed that the offer of Michael D. Reidy of \$5,150 cash less a commission of three per cent. to the real estate agent making the sale, for the property mentioned in these proceedings, to wit: Part of original lot numbered 8 in square numbered 459 in the city of Washington, District of Columbia, improved by premises known as number 611 "C" street northwest, Washington, D. C., and more particularly described as follows: Beginning for the same at the southwest corner of original lot numbered 2 and running thence north on the west line of said lot 2, 89 92-100 feet; thence northwesterly and at right angles to Louisiana avenue 8-100 feet; thence west 20 44-100 feet to the easterly line of subplot numbered 7; thence southeasterly along and with the easterly line of said lot 7, 5 89-100 feet; thence south 24 45-100 feet to the southeast corner of said lot 7, and thence east on "C" street 18 889-1000 feet to the place of beginning; and the offer of \$100.00 for the contents of the blacksmith shop upon said premises, be and the same is hereby accepted. It is further adjudged, ordered and decreed that the contract of sale herein be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 30th day of September, 1908. Provided a copy of this order be published once a week for three successive weeks in The

[Seal] Washington Law Reporter before said last-mentioned date. WENDELL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills. 35-St

W. C. Martin, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Emily Haynes, alias Emily Haines, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 25th day of August, 1908. ROBERT F. WARD, 434 9th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,858. Adm'n. [Seal.] 35-St

Chas. H. Turner, Attorney

In the Supreme Court of the District of Columbia.  
Estella M. Berryman v. Joseph Berryman and Jennie Smith. No. 27,912. Equity Doc. —

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 25th day of August, 1908, ordered that the defendants, Joseph Berryman and Jennie Smith, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in

The Washington Law Reporter and The Evening Star before said day. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 35-St

**Legal Notices.**

D. W. Baker, Solicitor

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court.  
No. 760.

In the Matter of the Condemnation of Squares Two Hundred and Twenty-six (226), Two Hundred and Twenty-seven (227), Two Hundred and Twenty-eight (228), Two Hundred and Twenty-nine (229), and Two Hundred and Thirty (230), in the City of Washington in the District of Columbia, for Use and Accommodation of the United States Departments of State, Justice, and Commerce and Labor.

Upon consideration of the petition filed herein by the United States of America, through Daniel W. Baker, on behalf of the Attorney-General of the United States, seeking the condemnation of all of squares 226, 227, 228, 229, and 230, in the city of Washington, in the District of Columbia, for the use of the United States Departments of State, Justice, and Commerce and Labor, in conformity with the act of Congress approved May 30th, A. D. 1908, entitled, "An Act to increase the limit of cost of certain public buildings; to authorize the enlargement, extension, remodeling and improving of certain public buildings; to authorize the erection and completion of public buildings; to authorize the purchase of sites for public buildings; and for other purposes," it is by the court this 24th day of August, A. D. 1908, ordered, that The Grand Opera House Co. (a body corporate), Plimpton B. Chase, Arthur A. Birney, Gashele DeWitt, and Ezra D. Parker (trustees), Orren G. Staples, Eugene W. Wheeler, Duparquet, Huot & Moneuse Co. (a body corporate), Arthur T. Brice and William J. Flather (trustees), Samuel G. Cornwell, Willard Hotel Co. (a body corporate), Annie F. Murphy, George H. Kyd (surviving trustee), William D. Hoover (trustee), Milton E. Alles (trustee), Mrs. Anne C. Snyder, John D. Barnes, Baltimore American Newspaper Co. (a body corporate), J. Forbes Beale, Albert W. Ward, James Cunningham, George H. Higbee, John M. Davis, Florentine Cafe Co. (incorporated), William E. Edmondston and Murray A. Cobb (trustees), Antonia P. Sickles, Edward J. Gardiner, Miranda Fraser, Rufus H. Darby Printing Co. (a body corporate), National Engraving Co. (a body corporate), Edward H. Thomas and John L. Prossie (trustees), Edwin H. Neumeyer, Israel Little, Jerome Mazzocchi, Guy H. Johnson and John C. Gittings (trustees), Anthony J. Clark, Dennis Mullaney, Elizabeth Trimble, Marion Frances Clark, Elizabeth Nailor (otherwise called Bettie G. Nailor), Robert Brown, Dennis J. McCarthy, The District of Columbia, Milton Smith, Benjamin F. McCauley, Frances M. Miller, Frederick W. Grenfell, Walter E. Wilcox and George F. Hane (trustees), The Central Dispensary and Emergency Hospital (a body corporate), American Security and Trust Co. (trustee), Edwin P. Jones, Kate Mitchell, Ella Davis, Etta Coleman, Margaretta Lavinia Nailor, James E. Grass, The Capital Bicycle Club (a body corporate), Union Trust Co. of District of Columbia, (trustee), William B. Hibbs and Benjamin S. Graves (trustees), Henry Ulke, Meyer Cohen and Adolph E. Wolf (trustees), William F. Hall, Edwin H. Pillsbury (trustee), Conrad Becker, Clara Solomon, George A. Williamson, Walter F. Williamson, Mary Ann Alken, Rena Williamson, John T. Williamson, Joseph Peyton, Harry J. Eisenbeiss, George M. Emmerich and Douglas S. Mackall (trustees), J. H. William Kettler, Daniel Cox, Thomas C. Wilson, John C. Wilson, Margaret Wilson, Edward L. Wittstatt, Thomas McLaughlin, Nannie McLaughlin, Walter Mountjoy, Lamar Gatewood, Aleyne A. Fisher, Albert Gainoly, Herman E. Gasch and Harry C. Birge (trustees), Andrew B. Graham, The Globe Printing Co. (a body corporate), Union Trust and Storage Co., of District of Columbia (trustee), Myer B. Newman, Lee Dorsey, Samuel C. Seibert, Allen Dixon, Joseph Hawkins, Joseph Sansone, John Henry Weisenborn and Caroline Weisenborn (his wife), Leo Sansone, John Baetgaluppi, Sindone Salvarran, Lavinia Norton, Louis Fugazzi, Frances M. Clark (otherwise called Marion Frances Clark), Attilio Viaggi, Giovanni Lavazzo, Heirs at law of William H. Birch, Mary E. Acton, Harvey J. McGowan, Jesse A. McGowan, Pinkney B. Havenner and Leonard J. Mather (trustees), James L. Norris and John B. Wight (trustees), Elizabeth J. Miller, John B. Larner and J. Edward Chapman (trustees), Bladen Forrest, James Keith Forrest, Edwin Forrest, Albert Dulaney Forrest, Thomas R. Keith Forrest, Mary Helen Forrest, Irene E. D. McSherry, Justin M. Chamberlain and Oscar Luckett (trustees), Welford B. Rand and James E. Padgett (trustees), C. Clinton James and Charles Bendheim (substituted trustees), Martha Scott (executrix), Elizabeth Emily Davidson, George Albert Davidson, Margaret Ann

**Legal Notices.**

Parker, Mary Elizabeth Davidson, Emma M. Sensenay, Samuel Blue, Elizabeth Schneider, Charles Schneider, David Schneider, Susanna A. Moreland, John Taylor, John Sansone, Lewis P. Shoemaker and Albert F. Fox (trustees), J. Edward Chapman, E. Welsh Ashford and Elmer E. Ramey (trustees), Charles F. Benjamin and Roger T. Mitchell (trustees), Matthew C. Byrne, Lucy C. Byrne, Julia M. Byrne, Mary Pical, Bartholomew Manix, Lizzie M. Walter, Frederick Walter, Francis Freschl, Daniel J. Burke, Michael Gatti, Henrietta Easton, Joseph T. Byrne, Giulio Esparti, Isaac Mendelssohn, Christian Heinrich, D. Edward Fitzgerald, Alexander H. Bell and Clarence Walmsley (trustees), Mary Elgin, Louise Joyce, Nellie Arthur Joyce, John L. Joyce, Jessie McGlinchey, Frances M. Miller, Mary L. Dempsey, Amanda J. Thorne, Margaret V. Joyce, George W. Joyce, Robert Edwin Joyce, Nellie Joyce, Andrew J. Joyce 3rd, Mary F. Casody, Frederick Casody, Fred S. Smith (assignee), Malcolm Hufty, William H. Manogue, Jennie Centner, Walter Wilson, Victoria McClelland, Sarah W. Russell, John Gallant, George Whitney White and Ross Thompson (trustees), Samuel Gassenheimer, Washington Electric Vehicle Transportation Co. (a body corporate), John Cassels and Mahlon Ashford (trustees), Jacob O. Viehmeyer, Maggie E. McElvane, Emma F. Ellis, May Viehmeyer, Jacob O. Viehmeyer (executor and trustee), Christiana Hensch, William Burnett, John P. Hohman, Ella Mitchell, Jennie Atkins, Catherine Louisa Sheehan, George A. Gray, Lewis D. Myerly, Ida Drury, Ora Angier, Mabel Gray, Clara Minor, Thomas F. Waggaman and Irving Williamson (trustees), William F. Quicksall and William S. McCarthy (trustees), E. Keller Houser, Ida Tempin (otherwise called Pauline Hall), Stephen Gatti, Seraphine A. Gatti, Gladys Ryan, Charles E. Banas and John W. Brawner (trustees), Emma F. Benjamin (otherwise known as Mrs. Willie Gilmore), Violet Monroe, Washington Loan & Trust Co. (trustees), Hazel Saunders, Randolph T. Warwick, Edna Mantell, Arthur C. Moses, Dorothy Wells, Thelma McNeil, David Moore and R. Golden Donaldson (trustees), Robert J. Kirkpatrick and Charles W. Simpson (trustees), Ray Gilbert, May Gray, J. Sprigg Pool and William A. Hill (trustees), Washington City Orphan Asylum of the D. C., Children's Hospital of the D. C., James S. Harvey, B. Fenwick Harvey, Margaret R. Harvey, Daisy Dyer, Adell Dyer, Harvey Dyer, Tarbell Dyer, Etta Dyer, Frances L. Dyer, Florence E. Dyer, James S. Harvey and B. Fenwick Harvey (trustees), Lincoln L. Pitznogle, William T. Powell, Albert A. Wilson (trustee), Arthur L. Cline, Calvin Cain, William Pierce, S. Louise Doubleday, Frank V. Hagerty, W. B. Moses & Sons (incorporated), William Sauter, William F. Sauter, George R. Sauter, and all other persons owning, occupying, or claiming any title, interest, or lien in or upon any of the said several parcels of land situated in the said squares aforesaid, which are sought to be condemned herein, be and they are hereby required to appear in this court and answer the exigencies of the said petition on or before the 1st day of October, A. D. 1908, at 10 o'clock A. M., at which time the court will proceed with the matter of the condemnation of the above-described parcels of property. Provided, however, that a copy of this order be published twice a week for five weeks commencing Tuesday, August 25th, A. D. 1908, in The Washington Post and The Evening Star and once a week in The Washington Law Reporter for four weeks.

[Seal] By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 35-4t

C. Clinton James, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph W. Mattingly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of August, 1908. JOSEPH W. MATTINGLY, 1525 5th st. N. W.; LEONARD H. MATTINGLY, The Partner. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,460. Administration. [Seal.] 35-3t

Justice blanks of every description for sale at this office.



**Legal Notices.**

**Leckie, Fulton & Cox, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the State of Alabama, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of George W. Hamner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of August, 1908. **EDWARD D. HAMNER**, Attalla, Ala. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,447. Administration. [Seal.] 35-81

**D. W. Baker, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court.**  
 No. 781.

**In the Matter of the Condemnation of Squares Numbered Sixty-three (63) and Eighty-nine (89) in the City of Washington in the District of Columbia, for the Use and Accommodation of the United States for Continuing the Improvement of Potomac Park.**

Upon consideration of the petition filed herein by the United States of America, through Daniel W. Baker, on behalf of the Attorney-General of the United States, seeking the condemnation of all of squares 63 and 89 in the city of Washington, in the District of Columbia, for the use and accommodation of the United States for continuing the improvement of Potomac Park, in conformity with the act of Congress approved May 27th, A. D. 1908, entitled, "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1909, and for other purposes," it is by the court this 24th day of August, A. D. 1908, ordered, that Heirs of John Allen, Heirs of Bernard Gilpin, Heirs of Edmund Hanly, Edmund Hanly, Mary J. Dashiell, Anna Brown, Joshua Warfield, Joshua N. Warfield, Heirs of Baltis Font, Michael Nichols, Heirs of Michael Nichols, Christian Kemp, Heirs of Christian Kemp, Robert Allison, Heirs of Robert Allison, Margaret J. Stone (trustee), The Chesapeake & Ohio Canal Co. (a body corporate), Joseph Bryan and Hugh L. Bond, Jr. (surviving trustees), James B. Nicholson, Myer B. Newman, Don A. Sanford, Oliver R. Harr, W. W. Edwards, John Camp, Heirs of John Camp, Charles A. McEuen, Emma L. Yoder, Malcolm Hufty, Charles T. Yoder, Columbia College (now George Washington University), Rose L. Easby and Fanny B. Easby (trustees), Rose L. Easby, Fanny B. Easby, Rosina H. Easby, and James S. Easby-Smith (trustees), William Easby, Thomas B. Easby, Harriet M. Easby, Marian C. Valk, Louisa B. Valk, Catherine S. Cole, Esther R. Brooke, Elizabeth B. Easby, Theodore F. S. King, Harry B. King, Alexius S. King, William H. Linkins, Wilhelmina M. Easby-Smith, Wilton J. Lambert, James Montgomery (trustee), Heirs of Amos Smith, Elizabeth Glass, Cassandra Wright, Amos S. Wright, William A. K. Wright, Priscilla Ramsey, Alfred Matthis, Benjamin Matthis, William Peak, Mary Peak, Elizabeth Brown, Susan McIntosh, Joseph Matthis, George Matthis, Heely McIntosh, Adeline Boren, Isaac Smith, Joseph Smith, Heirs of Militius Thomas Kirk, Heirs of Ferdinando Fairfax, Heirs of George Swingle, Heirs of Jacob Hoffman, Jr., Howe Totten, Edith Totten, Gerald H. Totten, Mary Howe Totten, Sarah B. Moore, Lilly C. Stone, Louis W. Moore, Heirs of John Kephart, Heirs of Henry Yoel (or Joel), Watson J. Newton, Augustus Burgdorf, C. H. Wiltzie, Richard Gaither, Martha S. King, Mary Cecilia King, May King, and Thomas King (minor), and all other persons owning, occupying, or claiming any title, interest, or lien in or upon any of the said several parcels of land situated in the said squares aforesaid, which are sought to be condemned herein, be and they are hereby required to appear in this court and answer the exigencies of the said petition on or before the 1st day of October, A. D. 1908, at 10 o'clock A. M., at which time the court will proceed with the matter of the condemnation of the above described parcels of property. Provided, however, that a copy of this order be published twice a week for five weeks, commencing Tuesday, August 25th, A. D. 1908, in The Washington Post and The Evening Star, and once a week in The Washington Law Reporter for four weeks. By the Court: **WENDELL P. STAFFORD**, Justice. A true copy.

[Seal] Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 35-41

**Legal Notices.****FOURTH INSERTION.**

**J. Harry Smith, Attorney**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term for Equity Business.**  
**Missouri Blackman, Complainant, v. The Unknown Heirs at Law, Devisees, and Alienees of Richard Sewell, Deceased.** Equity No. 27,898.

The object of this suit is to declare the title to the south 19 feet fronting on 21st street N. W. and running back equal width the depth of original lot 21, in square 78, in the city of Washington, District of Columbia, to be good of record in complainant, and to perpetually enjoin and restrain the defendants from asserting any title to said real estate. On motion of the complainant, by her solicitor, it is, by the court, this 4th day of August, 1908, ordered that the defendants, the unknown heirs at law, devisees, and alienees of Richard Sewell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause shall be proceeded with as in case of default. This order shall be published twice a month in the months of August, September, and October, 1908, in The Washington Law Reporter and The Washington Times. **JOBBAH NARD**, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug 7, 14; sept 4, 11; Oct 2, 9

**SIXTH INSERTION.**

**H. Randall Webb, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Olivia Scala v. Heirs of George Beall, Unknown.**  
 No. 27,890. Equity Doc. —.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece and parcel of real estate, to wit: Lots numbered forty-five (45) and forty-six (46) and the eastern one (1) foot and (7) inches of lot numbered forty-four (44), or so much of said lot forty-four (44) as was embraced within the original boundaries of lot numbered fifteen (15) in a subdivision of lots numbered fourteen (14) and fifteen (15) in square numbered nine hundred and forty-nine (949) in Washington City, District of Columbia, as per plat recorded in liber 25 at page 162 in the office of the surveyor for the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months.

[Seal] In The Washington Law Reporter before said day. **WRIGHT**, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

**H. Randall Webb, Attorney**

**In the Supreme Court of the District of Columbia.**  
**Jerome Hurst v. Heirs of George Beall, Unknown.**  
 No. 27,889. Equity Doc. —.

The object of this suit is to establish a complete and perfect title in fee simple in the complainant to the following described piece of real estate, to wit: Lot numbered forty-seven (47) in subdivision of certain lots in square numbered nine hundred and forty-nine (949) in the city of Washington, District of Columbia, as per plat recorded in the surveyor's office of the District of Columbia. On motion of the complainant, it is, this 7th day of July, 1908, ordered that the defendants, the heirs of George Beall, unknown, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter before said day.

[Seal] **WRIGHT**, Justice. A true copy. Test: J. R. Young, Clerk, by F. W. Smith, Asst. Clerk. July 10, 17; aug 7, 14; sept 4, 11

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### Bankruptcy; Rights of Receiver as to Property of Bankrupt in Foreign Jurisdiction.

An interesting question is presented and determined in the case of Philip v. Seckendorff, reported in this issue. The defendant, who was a tenant of the plaintiff in this District, was, on June 22, 1908, adjudicated a bankrupt by the United States District Court for the district of New Jersey. On July 8, 1908, the intervenor was appointed as receiver of the bankrupt's estate, and subsequently on July 24, 1908, took possession of the goods of the bankrupt on the leased premises in this District, placing a watchman in charge. On July 27, 1908, the receiver was elected as trustee in bankruptcy and duly qualified three days later. The plaintiff's action was brought on July 27, 1908, to recover rent in arrear, and the goods in dispute were attached, and subsequently the marshal maintained possession thereof jointly with the watchman placed in charge by the receiver. The trustee in bankruptcy, appearing specially for that purpose, moved to quash the attachment in order that he might make sale of the goods as he had been ordered by the New Jersey court to do. The opinion of Mr. Justice Stafford discusses clearly and forcibly the questions involved, and upholds the right of the trustee in bankruptcy to the possession of the

goods in question and to make sale thereof pursuant to the order of the New Jersey court free of the plaintiff's lien, which is transferred to the proceeds of sale. The plaintiff's action is allowed to proceed to judgment, but further proceedings under the attachment are ordered stayed.

### Right of Receivers to Take Part in Litigation.

In Metropolitan Trust Company v. North Carolina Lumber Company et al., decided by the United States Circuit Court for the Eastern District of North Carolina (162 Fed., 170), it is held that receivers are instrumentalities of the court, and are required to be impartial as between the parties litigant; they should have authority from the court, either express or implied, for all their acts. Specifically it is held that receivers appointed for the property of a corporation in a suit to foreclose a mortgage thereon have no standing to file exceptions to the report of the master determining the respective rights of the mortgagees and other creditors, nor will such exceptions be entertained when filed in the name of the receivers "and creditors," no creditors being named. The court said in part:

This presents a novel question not raised by counsel, but into which the court deems it a duty to inquire ex mero motu: What right have the receivers to except? They are merely the hand of the court, to hold and manage the property placed in their hands by the court, under the direction of the court, for the preservation thereof for the benefit of the parties litigant, all the parties or those who shall establish the best right thereto. Foster's Federal Practice, Bates' Federal Equity Practice, and authorities cited. They should be impartial—represent no one interest, but all. And nowhere can authority be found—at least this court has found none after diligent search—which authorizes them to enter into litigation between parties touching the property placed in their hands, to be held until the same is distributed by order of the court. A receiver should have authority, express or implied, from the court for all his acts. He is the creature and arm of the court, from which he derives his existence as receiver, and has no authority, except such as he gets from the court. Property in his possession is in custodia legis, and is placed in his possession for conservative administration by the court. The functions of a receiver are twofold: (1) To preserve pendente lite the property and its income taken into custody, which is the subject of litigation, from deterioration, waste or loss, destruction or depreciation in value; (2) to administer the property and distribute it or dispose of it according to the rights of the parties to the suit, as ascertained and determined by the decree of the court in the cause. To engage in, sue, and defend in a cause at law or in equity they should obtain permission from the court appointing them. It is not contemplated they should take part in the litigation of the cause in which they are appointed, and have no standing in court for this purpose. He, the receiver, is

but the creature of the court, the money or property in his hands is in custodia legis for whoever can make out a title to it. It is the court itself which has the care of the property in dispute, and he is merely the representative of the court, from which he must receive all his authority in the premises. All dealings with the property without such authority are void ab initio. *Booth v. Clark*, 17 How., 330, 15 L. ed., 164.

The receivers in this cause asked for no authority to engage in or become parties to this litigation in the manner attempted by the filing of the exceptions herein; hence have no standing in court for this purpose. They were nominal parties to the first bill filed, and it does not appear they were necessary or indispensable parties. They were not parties to the mortgage or mortgages asked to be foreclosed. It is anomalous for a receiver to except to the decision of a master in chancery, the alter ego of the court for the investigation of questions involved in litigation referred to such master. The expression, "and creditors," etc., without disclosing them, does not add force to the exceptions, none of which go to the title of the receivers. The names of these creditors should have been disclosed in the exceptions, and not compel the chancellor to hunt through a voluminous record to ascertain who was meant or intended to be included in the exceptions.

#### *Res Ipsa Loquitur.*

In *Paul v. Salt Lake City R. Co.*, 95 Pac., 303, a case involving injuries to a passenger, it was contended for the plaintiff that, under the doctrine of *res ipsa loquitur*, all that it was necessary to prove, in order to make out a *prima facie* case, were the facts that the plaintiff was a passenger and was injured while alighting from the car. The Supreme Court of Utah, however, declined to go so far, but said that if there was proof that she was injured by the moving of the car while alighting, the presumption would arise that the movement was due to the negligence of the company. The court said: "To show merely that an accident occurred, and that an injury was sustained by a passenger, is not enough. It must further be made to appear that the injury was caused by something which, at the time it occurred, was in the care, custody, or under the control of the carrier, or in some way connected with or related to its business in the transportation of passengers."

#### *Part Payment as Affecting Statute of Limitations.*

In the case of *Anderson v. Nystrom*, recently decided by the Supreme Court of Minnesota (114 N. W., 742), it appeared that the father of the defendants gave to the plaintiff three promissory notes. At a time when they were barred by limitation he sent a payment without giving direction as to its application, and plaintiff credited one-half the amount on each of two notes. After the father's death his sons gave plaintiff a note for the three held by him, which note was not paid and

suit was brought thereon. It was held that where payment is made on claims not barred, without direction as to its application, the creditor may split it up, and by indorsement on the different obligations, prevent the running of the statute, but that this rule will not apply in the case of claims already barred.

#### *Railway Benefit Association; "Disability."*

A contract for disability benefits in connection with the relief department of a railway company, an institution organized to pay such benefits to members, provided that "the word 'disability' shall be held to mean physical inability to work." It appeared that only railway employees were permitted to join the relief department. The Supreme Court of Nebraska held (*Keith v. Chicago, Burlington & Quincy Railway Company*) that the words "physical inability to work" meant inability to perform such labor as the injured member was engaged in at the time of his injury, or similar labor which would enable him to earn wages equally as remunerative. The court further held that where an injured member recovered so as to be able to perform such work as was contemplated in the contract, or similar work equally desirable and remunerative, then the obligation of the defendants to pay disability benefits ceased, but that the defendants would not be released where the member only recovered sufficiently to enable him to earn much smaller wages at some other employment, or employment procured through the charity or indulgence of friends or relatives.

#### *Bills and Notes; Holder in Due Course; Negotiability.*

In *Fullerton Lumber Co. v. Schnouffer*, in the Supreme Court of Iowa (July, 1908, 117 N. W., 50), it was held that negotiability is not essential to the validity of a note, and the fact that it is negotiable in form does not, as between the maker and payee, deprive the maker of any defense thereto he would otherwise have; and hence the signer of a note can show by parol in an action thereon by the payee that he was a surety only and that the time for payment was extended without his consent, thus discharging him. It was laid down that the rule was unaffected by Negotiable Instruments Act (Code Supp., 1907, sec. 3060a192), providing that one primarily liable on an instrument is the person who by its terms is absolutely required to pay it, and that all other parties are secondarily liable, and by section 3060a120, providing that one secondarily liable on a note is discharged by an extension of the time of payment without his consent, since the act was intended only to govern the rights of holders in due course, that intention being shown by section 3060a58, providing that in the hands of any holder other than a holder in due course a negotiable instrument is subject to the same defenses as if it were nonnegotiable.

*Master and Servant—Assumption of Risk.*—A master is not liable to his servant injured in a boiler explosion for failure to apply a hammer test to the flues, where it appeared that such test could not have been applied. *Ware v. Ithaca St. Ry. Co.*, 109 N. Y. Supp., 426.

# Supreme Court of the District of Columbia.

J. VAN NESS PHILIP, PLAINTIFF,

v.

J. W. SECKENDORFF, DEFENDANT.

**BANKRUPTCY; RIGHTS OF TRUSTEE APPOINTED IN ANOTHER JURISDICTION TO PROPERTY LOCATED HERE; LIEN OF LANDLORD.**

1. A receiver in bankruptcy, appointed after adjudication in bankruptcy, who has taken actual possession of his bankrupt's goods in another district, is entitled to priority in procedure over a creditor in the latter district who, for the purpose of enforcing a landlord's lien by attachment, brings his action in the local court with full knowledge of the facts, seeking to oust the receiver from possession.
2. In such a case, the local court, on intervention by the receiver, who has since become trustee, will stay proceedings under the attachment, to the end that the trustee may sell the goods under the order of the bankruptcy court, free of the landlord's lien, which will be trans. erred to the proceeds.

At Law, No. 50,801. Decided September, 1908.

HEARING on a motion by a trustee in bankruptcy to quash an attachment of the goods of the bankrupt issued at the suit of a landlord. Attachment proceedings stayed.

Mr. A. A. BIRNEY and Mr. H. F. WOODARD for the motion.

Mr. JOHN J. HAMILTON opposed.

Mr. Justice STAFFORD delivered the opinion of the Court:

The plaintiff is a landlord, who brings this action to collect rent in arrears and to secure a condemnation and sale of the goods attached on the writ, in satisfaction of the judgment he shall obtain, to the extent of his lien thereon for rent. The proceeding is under a local statute which will be referred to hereafter.

The defendant is the plaintiff's tenant, a non-resident of the District of Columbia, a resident of the State of New Jersey, who has been adjudged a bankrupt by the United States District Court for the District of New Jersey.

The intervener is the trustee in bankruptcy of the defendant who, appearing, as he says, solely for the purpose of this motion, moves that the attachment be quashed as an interference with his own right to control and sell the attached goods.

It will be necessary to observe the exact order of events.

The defendant has been the plaintiff's tenant for a series of years, and the goods attached are the defendant's goods on the leased premises, and presumably brought there since the relation of landlord and tenant was established. The rent for nearly a year is overdue. The adjudication of bankruptcy occurred June 22, 1908. The intervener was appointed receiver July 8, 1908, and took possession of the goods in dispute on the 24th of the same month, placing a watchman in charge, and has maintained his possession ever since, save for the attachment proceedings of the plaintiff. July 27, 1908, the intervener was elected trustee in bankruptcy of the defendant and on the 30th of the same month duly qualified.

The plaintiff's action was brought July 27, 1908, when the goods in dispute were attached on the writ by a United States deputy marshal who has since maintained possession jointly with said watchman.

The plaintiff is named as a creditor in the schedules of the bankrupt and notice of the first meeting of creditors was duly mailed to him by the referee in bankruptcy on or before July 18, 1908. The intervener has been ordered by the New Jersey court to sell the goods in question free of all liens, the same liens to be transferred to the proceeds.

The Code of Law for the District of Columbia, sections 1229 and 1230, reads as follows:

"Sec. 1229. Lien for Rent.—The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months.

"Sec. 1230. How Enforced.—The said lien may be enforced:

"First. By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels.

"Second. By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosesoever hands they may be found.

"Third. By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear."

It is admitted that the steps taken by the plaintiff were regular and in due form and such as he had a legal right to take under these sections except for the pendency of the cause in bankruptcy; but it is insisted that the goods, when the attachment was attempted to be made, were already in the custody of the law and of the said court of bankruptcy, wherefore the plaintiff's attempt to enforce his lien by attachment was an interference with the rightful possession and jurisdiction of the bankruptcy court; and that this court, such facts being called to its attention, is bound to recognize the priority of the bankruptcy proceedings and stay further proceedings herein. The exact prayer of the motion is to quash the attachment, but the substance of the application is to stay proceedings in this court and not permit our process to be used to the embarrassment of the court which has first acquired jurisdiction of the property and the parties.

The plaintiff's contention is, that the alleged possession of the intervener as receiver and subsequently as trustee is of no force or effect in law by reason of the fact that his appointment to those offices was not made by or under the authority of the court of bankruptcy for the District of Columbia, but by and under that of the bankruptcy court of another district, which latter court, he insists, is limited in jurisdiction to its own territory and can confer no authority upon its said officers to act outside of it. He insists that before the receiver or trustee could assume possession of the bankrupt's estate in this District it was necessary that he should be appointed by the bankruptcy court here, which he admits might have been done under proper ancillary proceedings.

There are two lines of cases under the bankruptcy statutes, both the present act and the earlier ones, upon this question of authority in the district courts to exercise their powers beyond

their territorial limits. One holds that such authority exists without resort to bankruptcy courts in other districts. The other denies the existence of the authority except as it is recognized and carried into execution by the bankruptcy courts of other districts by way of auxiliary or ancillary proceedings. The cases will be found collected in Loveland on Bankruptcy, sections 19 and 21, and in Remington on Bankruptcy, sections 1705, 1706, the former author adopting the first view, the latter the second. The principal cases are: In favor of ancillary proceedings—*Re Nelson*, 149 Fed., 590; *Re Sutter*, 131 Fed., 654; *Re Peiser*, 115 Fed., 199; *Re Tift*, 23 Fed. Cas., No. 14,034; *Re Schrom*, 97 Fed., 760; *Sherman v. Bongham*, 21 Fed. Cas., No. 12,762; see, also, the language of *Bradley, J.*, in *Lathrop v. Drake*, 91 U. S., 516. Opposed to ancillary proceedings—*Re Williams*, 120 Fed., 38; *Re Von Hartz*, 142 Fed., 726; *Koss-Meeham Foundry Co. v. So. Car. & Foundry Co.*, 124 Fed., 403; *Re Richardson*, 20 Fed. Cas., No. 11,774; *Re Wilka*, 131 Fed., 1004.

That a district court even when sitting as a court of bankruptcy has no authority to act by process beyond its own limits is, we think, perfectly clear. It required a special statute to give it power even to issue a subpoena for witnesses. *R. S. U. S.*, 876. But that the title to the bankrupt's estate wherever situated is vested in the trustee by the fact of his election and qualification in connection with the provisions of the Bankruptcy Act seems equally clear. Bankruptcy Act, 1898, sec. 70a; *Markson v. Heaney*, 16 Fed. Cas., No. 9,098; *Sherman v. Bingham*, 21 Fed. Cas., No. 12,762; *Re Tift*, 23 Fed. Cas., No. 14,034; *Lathrop v. Drake*, 91 U. S., 516; *Matter of United Button Co.*, 12 A. B. R., 761; *Re Peiser*, 115 Fed., 199; *Re Sutter*, 131 Fed., 654; *Re Wilka*, 131 Fed., 1004; even *Re Benedict*, 140 Fed., 55, although it denies the authority of a receiver in bankruptcy appointed in another district, declares that property of the bankrupt situated in such other district is impressed with a certain status, whatever that may mean, owing to the bankruptcy proceedings (pp. 59 and 60). And *Loveland*, who adopts the view that ancillary proceedings are necessary, says: "The trustee takes the title to all the bankrupt's property in this country wherever situated, even though it be in a State other than that in which the bankruptcy proceedings are pending" (p. 437).

As to the receiver the question is somewhat different. He may be appointed before adjudication of bankruptcy and it may be that he takes nothing more than the right of a custodian. *Wiswall v. Sampson*, 14 How., 64. In the present case, however, the appointment of the receiver was subsequent to the adjudication. It would seem to follow that the receiver or trustee standing as owner or legal custodian, and being first in actual possession of the bankrupt's goods, even though in a district other than the one where the bankruptcy cause is pending, should be entitled to the recognition, protection, and assistance of other courts exactly like any other owner or legal custodian. This would mean that State courts would give him the aid of their process to recover or defend the possession of the bankrupt's estate so long as he should be acting in obedience to the orders of the court which appointed him, and that other courts of bankruptcy would give him all needed assistance in

the performance of his duties. The present case is brought in the Circuit Court, so-called, for this district, which is that branch of the Supreme Court of the District of Columbia which takes cognizance of suits of this character. It stands, therefore, like a cause in a State court. The same Supreme Court of the District of Columbia has all the jurisdiction of a United States district court and is a court of bankruptcy by special designation in the Bankruptcy Act of 1898, chap. 2, sec. 2. So that this same court sitting as a court of bankruptcy would be bound to reappoint the intervener on proper application, if that is necessary, and give him all needed assistance in the performance of his duties, or else, sitting as a purely law court, like any State tribunal, would be bound in all comity to recognize him in the character of owner or custodian subject to the plaintiff's lien. Then let it be carefully noted what the present situation is. It will be observed that there had been an adjudication of bankruptcy before the plaintiff's attachment; so that it had been determined by the proper court that the defendant's assets must be distributed under this bankrupt law; and whether the receiver of the New Jersey court, as such, had or had not strict authority to act within this district, the court of bankruptcy for this district would, on proper application, give the receiver its assistance in reducing the assets here to possession and control, unless to do so would be to needlessly oust the local court of its jurisdiction already properly obtained. The trustee when elected and qualified took title, by relation, as of the date of the adjudication. The case, then, is that the plaintiff made his attachment with full notice that the defendant had been duly adjudged a bankrupt and that a receiver had been appointed by the New Jersey court whose right to take possession of the assets here would be recognized and enforced by the court of bankruptcy for this district when properly applied to, that such receiver had taken actual custody of the goods which were then in the bankrupt's possession, and that in due course a trustee would be appointed to whom the title to all the bankrupt's seizable assets would be passed, which trustee, upon due application, would be entitled to the aid and protection of the court of bankruptcy for this district. That being the case, the question is, whether such an attachment ought to be regarded by this court as investing it with a jurisdiction in the plaintiff's favor prior and superior to the bankruptcy proceedings? If so, it can not be on the ground that it is necessary for the protection of a home creditor for creditors here are entitled to no higher consideration than creditors in New Jersey in the settlement of the bankrupt's estate. Creditors in all the districts of the United States stand on a parity in proceedings in bankruptcy, all their rights under local law being preserved. The plaintiff will be as secure in his rights under our local statute before the New Jersey court as before the courts of the district.

If the plaintiff is right in his position that ancillary proceedings must be taken here, those proceedings will not result in any advantage to him for they would be conducted, as their name implies, strictly in aid of the court of primary jurisdiction. For a part of his claim the plaintiff admits that he must go to the New Jersey court—that is, for the part unsecured by his lien, said lien cover-

ing only the rent for three months. As to the part so secured he will be equally protected there and here. It is objected in his behalf that if he is obliged to go to New Jersey to prove this portion of his claim he will not be secured upon the proceeds of the property reduced only by the expenses of foreclosing that lien, but must take his turn after four other classes of creditors have been satisfied, which may result in his receiving nothing at all; and he points to the Bankruptcy Act of 1898, sec. 64b, as showing this. That clause declares that the debts to have priority and be paid in full shall be, in order of payment, (1) the cost of preserving the estate; (2) the filing fees paid by creditors in involuntary cases and the expense of recovering assets by creditors for the benefit of the estate; (3) the cost of administration, including witness' and attorney's fees; (4) wages within certain limitations; and (5), "debts owing to any person who by the laws of the States or the United States is entitled to priority." This question is one to be dealt with by the court of bankruptcy when it comes to the marshalling of assets and liens. It can not be that the court of bankruptcy sitting in this District would retain the proceeds of the sale of these goods and settle the plaintiff's lien thereon before transmitting the balance to the court of primary jurisdiction on the theory that its own interpretation of the law would be more sound or more favorable to the plaintiff than that of the New Jersey court. Both courts would have the same statute to construe, and, it must be presumed, would construe it alike. There are not wanting decisions which hold that the lienor in cases like the present is entitled to be paid out of the net proceeds of the lien property without diminution for expenses of general administration. *Remington on Bankruptcy*, sec. 1993; *Prince v. Walter*, 131 Fed., 546.

But however this may be it can not afford a ground for administering the funds in the local bankruptcy court, thus dividing up the bankrupt's estate and administering it piecemeal. There must be one general administration of the estate. The right of a trustee in bankruptcy, under proper orders, to sell free and clear of all liens, the same liens to be transferred to the proceeds, is beyond question. *Remington on Bankruptcy*, sec. 1975 et seq.; *Loveland on Bankruptcy*, p. 608, with authorities there cited.

If the trustee, under ancillary proceedings in the local bankruptcy court, would have the same authority, it can not advantage the plaintiff to have the sale made by such an officer rather than by the present trustee.

This, then, is the practical result, that whether the sale be conducted by the receiver or by the marshal, whether under the order of the New Jersey referee, or under the order of this court on execution, the proceeds will be charged with the plaintiff's lien, and his rights fully protected. It is merely a question of orderly and seemly procedure. Shall this court insist upon the case proceeding to execution and sale, or shall it permit it to proceed no further than to fix the amount of the debt, if that be in controversy, and stay all proceedings under the attachment, to the end that the receiver or trustee may sell under the order of the bankruptcy court of New Jersey? We think the latter course is the becoming one to be taken in the circumstances.

The most recent case bearing any resemblance

to the present is, perhaps, *Hiscock v. Varick Bank*, 206 U. S., 28, wherein, at page 41, language is used by the chief justice, delivering the opinion, which, taken apart from the facts of that case, might seem to indicate that a lien like the present might be enforced regardless of bankruptcy proceedings. In that case, however, which was one of a pledge of collateral securities, the pledgee had proceeded under his contract with his debtor and sold his securities and applied them upon his debt before any adjudication of bankruptcy. The trustee's title which related to the date of the adjudication did not reach back to the date of the sale. Consequently, the sale having been fair in all respects, the court refused to disturb it, although a petition in bankruptcy was pending when the sale was made.

We give no weight to the claim that the attachment should be treated as dissolved like the ordinary attachment because made within four months of the bankruptcy petition, or in this case, subsequent thereto; for this attachment is not for the purpose of creating a lien but only for the purpose of enforcing a lien already created and valid as against bankruptcy. It is merely a remedy. Our decision is based upon the other grounds above given.

Stated in a sentence, our holding is that a receiver in bankruptcy, appointed after adjudication in bankruptcy, who has taken actual possession of his bankrupt's goods in another district, is entitled to priority in procedure over a creditor in the latter district who, for the purpose of enforcing a landlord's lien by attachment, brings his action in the local court with full knowledge of the facts, seeking to oust the receiver from possession. In such a case the local court, on intervention by the receiver, who has since become trustee, will stay proceedings under the attachment, to the end that the trustee may sell the goods under the order of the bankruptcy court, free of the plaintiff's lien, which is transferred to the proceeds.

Accordingly an order will be entered that the action be allowed to proceed to judgment, but that no further proceedings be taken under the attachment.

#### The Negotiable Instruments Law. [New York Law Journal.]

*Law Notes for August, 1908*, editorially remarks: "In another well-known instance, the courts have defeated the very idea which lies at the basis of a uniform Negotiable Instrument Act. The courts of New York have held that section 25 of the act (sec. 51 of the New York statute) leaves the rule of *Coddington v. Bay* (1822, 20 Johns., N. Y., 837), as to an antecedent debt as consideration, in full force (*Sutherland v. Mead*, 1903, 80 App. Div., N. Y., 103). The reasoning upon which this conclusion is founded is unanswerable, if the statute is to be interpreted as a mere piece of local legislation. But where there is any ambiguity in a statute, the purpose of the legislature may well be considered in determining which of two alternative interpretations is to be adopted, and the purpose of the Negotiable Instrument Act, its 'great and leading object,' in the words of Chief Justice Alvey, in *Wirt v. Stubblefield* (1900, 17 App. D. C., 283), was 'to establish a uniform system of law to govern negotiable instruments wherever they might circulate or be negotiated.' This



case, the English case of *Bank of England v. Vagliano* (1891, A. C., 107, 144—the opinion of Lord Herschell), and the Virginia case of *Trustees of American Bank v. McComb* (1906, 105 Va., 473), ought to be carefully considered by every judge who is called upon to construe the Negotiable Instrument Act.

"The thing that many judges seem not to be able to grasp or to appreciate is the fact that the negotiable instrument law is in fact a statute. Constantly courts, in States where the Negotiable Instruments Law has been enacted, investigate a question arising on bills or notes utterly ignoring the act and basing their decision on older cases and text-books. Take, for instance, the case of *Polhemus v. Prudential Real Corp'n* (N. J. Ct. of Errors and Appeals, 1907, 67 Atl. Rep., 303).

"The case is admirably and learnedly reasoned, and its conclusions confirmed by a great array of citations from the older New Jersey authorities and from text writers, but several of the points are specifically covered by the act, to which, we believe, there is not one reference. In short, the court's conclusions are based on citations of cases which are no longer of binding force, and are correct expositions of the law only because and to the extent that their results have been incorporated in the act, while the real source of authority is entirely overlooked. And this case by no means stands alone. In instructive contrast to such decisions stands the course adopted by the Supreme Court of Virginia, in *Baltimore, etc., R. Co. v. First Nat. Bank* (1904, 102 Va., 753), where, after quoting sections of the act which settled the points in controversy and not a single case or text writer, Keith, president, said: 'This opinion might be greatly prolonged by citation of conflicting cases, and a discussion of the discordant views entertained by courts and text writers of the greatest ability upon these questions; but the object, as we understand it, of the codification of the law with respect to negotiable instruments was to relieve the courts of this duty, and to render certain and unambiguous that which has hitherto been doubtful and obscure, so that the business of the commercial world, largely transacted through the agency of negotiable paper, might be conducted in obedience to a written law emanating from a source whose authority admits of no doubt.' It is much to be wished that courts should show that they regard their own statutes as authoritative, and should imitate the wise restraint here exhibited."

On November 24, 1905, we criticised adversely, on the same ground now taken by Law Notes, the decisions of the appellate division in *Sutherland v. Mead* (80 A. D., 103), *Roseman v. Mahony* (86 id., 377), and kindred cases. It is to be said that the New York Court of Appeals has not directly upheld the doctrine of *Coddington v. Bay* since the adoption of the Negotiable Instruments Law. We do not regard the remarks at the conclusion of the opinion in *Bank of America v. Waydell* (187 N. Y., 115) as showing a deliberate intention to continue the existence of the doctrine of *Coddington v. Bay*. In *Brewster v. Schrader* (20 Misc., 480), Judge Werner, now of the Court of Appeals, held, contrary to the view taken in the appellate division cases above referred to, that section 51 of the Negotiable Instruments Law was intended to and had altered the rule of *Coddington v. Bay*.

In *Bank v. Zimmerman* (185 N. Y., 210), the New York Court of Appeals evinced adequate appreciation of the spirit and scope of the statute, saying in part:

"The law being thus settled in this State, the Negotiable Instruments Law was passed in 1897 as the outcome of a general movement to bring about a uniform law in this country covering the subject of 'bills and notes.' It was a codification of the law, and in the respect which we are considering it modified the rule as formulated in *Merritt v. Todd*, 23 N. Y., 28. It established one rule, which was to be applicable to all cases, that where an instrument 'is payable on demand presentment must be made within a reasonable time after issue.' No distinction was to be made as theretofore when the instrument was an interest-bearing obligation. While, therefore, it must be regarded as changing the rule upon the subject of the time for presentment of such instruments by placing them upon the same footing, the fourth section of the law has to be given effect, which requires, in determining what is a reasonable time, a consideration to be had of the nature of the instrument, any usage of trade and the facts of the particular case."

The policy of interpretation of an interstate code, contended for by Law Notes and exemplified by the spirit of the New York Court of Appeals in *Bank v. Zimmerman*, should be observed by all courts. It should constantly be kept in view that uniformity of interstate law was contemplated, so that peculiarities of local law formerly existing may be abandoned. Wherever practicable, decisions construing different sections of the law should be followed by the tribunals of other States. So far as we have been able to observe the Negotiable Instruments Law as an experiment in codification has been a practical success. The feasibility and desirability of codification may be demonstrated if the courts of the Union will co-operate in effectuating this law.

The disposition to amend the act by individual States should be discouraged. By chapter 287 of the Laws of 1904 of New York it was provided that "no bank shall be liable to a depositor for the payment by it of a forged or raised check unless within one year after the return to the depositor of the voucher of such payment such depositor shall notify the bank that the check so paid was forged or raised."

In the third edition of his *Annotated Negotiable Instruments Law*, Mr. John J. Crawford, by whom the statute was drawn, very properly observed with regard to this New York provision:

"It does not seem to be germane to the Negotiable Instruments Law and would more properly have been enacted as an amendment to the Banking Law. If the statute is to be amended by adding provisions outside of its proper scope it will soon become such a piece of patchwork that there will be a demand for its repeal."

**Carriers—Liability of Connecting Carriers.**—Where a connecting carrier's liability was limited to a loss sustained on its own line, and no loss was there shown to have occurred, such carrier was not liable for a statutory penalty for failing to pay a claim for damages within sixty days. *Moody v. Southern Ry. Co.* (S. C.), 60 S. E. Rep., 711.

**Competency in His Own Favor of Creditor's Indorsement of Payment.***[New York Law Journal]*

In *Brown v. Carson*, in the Kansas City Court of Appeals, Missouri (June, 1908, 111 S. W., 1181), it was held that a credit being indorsed on a note after the statute had run against the note, the resuscitating payment must be proved by evidence aliunde the indorsement. On this point the court said:

"It will be observed that the Statute of Limitations had run against the note at the time of the credit of \$100 shown by the indorsement, and it is clear the note was barred by the statute when this action was brought, unless it was saved by that credit. The burden devolved on plaintiff to prove the fact of the resuscitating payment by evidence aliunde the indorsement, which, standing alone, was no evidence of that fact, as it partook too much of the nature of a self-serving act of the payee. The rule thus is stated in *Goddard v. Williamson's Admr.* (72 Mo., loc. cit., 133): 'When plaintiff proves that the credit was made at a time when it was against his interest to make it, it is admissible. If made by or with the consent of the payor of the note, it is admissible, but a mere indorsement by the holder himself without the knowledge or consent of the payor, or other proof that the payment was then made, is not admissible if the note would be barred by the statute but for the credit indorsed; otherwise the holder of a note would have no difficulty in avoiding the bar of the statute.' *Briscoe's Admr. v. Huff*, 75 Mo. App., 288; *Crow v. Crow*, 124 Mo. App., 120, 100 S. W., 1123; *Phillips v. Mahan*, 52 Mo., 197; *Haver v. Schwyhart*, 39 Mo. App., 303; *id.*, 48 Mo. App., 50; *Loewer v. Haug*, 20 Mo. App., 163; *Smith v. Zimmerman*, 51 Mo. App., 519."

In *Stephen's Digest of the Law of Evidence* (art. 28) the rule is formulated as follows:

"An indorsement or memorandum of a payment made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment was made, is not sufficient proof of such payment to take the case out of the operation of the Statutes of Limitation; but any such declaration made in any other form by, or by the direction of, the person to whom the payment was made is, when such person is dead, sufficient proof for the purpose aforesaid."

In the early New York case of *Rosenboom v. Billington* (17 Johns., 181) it was decided that an indorsement of a payment on a bond or note by the obligee or promisee is competent evidence to go to the jury on the question of payment, if it be shown affirmatively that the same was made before the instrument became outlawed, and therefore when its operation amounted to an admission against said obligee's or promisee's interest. This case has been followed in New York and cited throughout the Union.

The question of the kind and sufficiency of evidence to establish that the indorsement was made within the necessary period is one of very considerable importance. In *Coffin v. Buckman* (12 Maine, 471) the required proof was made out very simply but most conclusively. The handwriting having been proved, it appeared that "the indorsement must have been made before the six years had expired, for the note was given in 1825 and the testator died in 1829." It may occasionally

happen that a plaintiff can produce direct testimony of some person who saw him write the admission, and remembers or is able approximately to fix the date. Where, however, there is nothing but the testimony of the creditor himself as to the time when the indorsement was made, it should be excluded from evidence. To hold otherwise would be to sanction the admission of a written declaration in form against interest, though in reality self-serving, if bolstered up by an oral declaration that is purely self-serving.

**Boys and Contributory Negligence.**

Contributory negligence is always a question of difficulty, and it is not made easier when it is complicated by the introduction of an intelligent boy of 14, as it was in a recent New South Wales case—*Watson v. Charles Anderson & Co.*—for, as Mr. Justice Wills once said, "everyone knows that if boys are not well watched, they will get themselves into danger where there is any opportunity of doing so." The boy in question, after being some weeks at other work, had been put to tend a woolscouring machine. The wool was passed through powerful rollers fed by an endless traveling tray or curtain, and at times, when the wool got clogged just in front of the rollers, it had to be removed and fed to the rollers. The foreman took the intelligent boy round to the machine, where there was another boy about the same age, and told this boy to show the newcomer what to do, but gave him no further instructions. The only warning he had was that of a man in charge of the department, who, seeing him picking the clogged wool out by hand, put him aside, saying, "That is a dangerous game you are at!" A few minutes later, while the boy was freeing some clogged wool from the curtain, his hand was drawn in between the rollers and badly crushed. An action was brought against the employers, and they set up the defense of contributory negligence. In leaving this question to the jury, the chief justice told them that, in considering the question of contributory negligence, it made no difference whether the plaintiff was 14 years of age or 21, and refused to say that what would be contributory negligence on the part of an adult would not be negligence on the part of a boy of the plaintiff's age. This was the misdirection complained of, and the Court of Appeal held that it was calculated to mislead the jury. Negligence must be relative to a person's age, experience, and capacity, and the standard of the adult in these matters can not be exacted from the boy. But graduating the standard opens a vista of nice questions for juries. They will have to determine what is the intelligence and care to be required of the normal boy of 10, of 12, or of 16. Then there is the girl, who presents more difficulties even than the boy. But no doubt juries will be found equal to the situation. They have the inestimable advantage of not having to give their reasons.

**Carriers—Who are Passengers.**—One who gets on the train, mistaking it for that of another road and attempts to alight, but changes his mind, and decides to pay his fare, is not, while on the car steps, a passenger. *DeVane v. Atlanta, B. & A. R. Co.* (Ga.), 60 S. E. Rep., 1079.

**Bills and Notes; Holder in Due Course.**

In *Voss v. Chamberlain*, in the Supreme Court of Iowa (July, 1908, 117 N. W., 269), it appeared that the negotiable instruments law, which has been adopted by that State, provides that every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course, but that such rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. It was held that where one G., having the custody of notes indorsed by defendants, the payees, wrongfully pledged them to plaintiff by way of substitution for other collateral held by plaintiff as security for antecedent indebtedness of G., defendants could not overcome the presumption that plaintiff became the holder of the notes in due course without notice by showing that the title of G. was defective, and to defeat the title of plaintiff defendants had the burden of proving want of good faith on the part of plaintiff in accepting the notes. The court said in part:

"It is argued, however, that plaintiffs did not show the Bank of Denison to be a holder in due course, because there was no competent evidence with reference to one of the owners of the bank that he had no notice of the want of right or authority on the part of Green to transfer the notes by delivery, and counsel rely upon cases of which *McKnight v. Parsons* (Iowa), 113 N. W., 858, and *Keegan v. Rock*, 128 Iowa, 39, 102 N. W., 805, are examples, holding that, as against a defense by the maker that the instrument was procured and negotiated through fraud or in breach of trust, the holder must affirmatively establish want of notice. But the cases thus relied upon are those in which it is held that by reason of defective execution of the instrument itself, or lack of assent on the part of the person sought to be charged as maker, it has not become a negotiable instrument to which the rules relating to indorsement and transfer are applicable. No such question arises in this case. The notes were fully executed and delivered as negotiable instruments to the defendants, and as such were held by them when they were abstracted from the possession of defendant Chamberlain and delivered by Green to the bank. The authorities already cited expressly negative any obligation on the part of the holder to prove diligence in ascertaining the right of the person in actual possession purporting to transfer title and charge the holder with the defective title of the person making the transfer only where bad faith is shown. In the United States there has been a continuing conflict of authority on this question. See 2 *Randolph's Commercial Paper*, secs. 996-1001; 2 *Daniel's Negotiable Instruments*, sec. 1680. This uncertainty in the law has been remedied by the adoption in this State of the Negotiable Instruments Act, by which it is provided in section 59 (Code Supp., 1907, sec. 3060a59) as follows: 'Every holder is deemed prima facie to be a holder in due course, but when it is shown that the title of any person who has negotiated the instrument was defective the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned

rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.' Defendant's can not, therefore, overcome the presumption that the Bank of Denison became the holder of the notes in due course—that is, without notice—by showing that the title of Green to such notes was defective. In other words, to defeat the title of the bank defendants have the burden of proving want of good faith on the part of the bank in accepting the notes from Green."

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**Trial and Procedure; When Party Erroneously Assumes the Burden of Proof.**  
[Central Law Journal.]

In *Burgraf v. Byrnes* (Minn.), 116 N. W. Rep. 838, it is held that where a party erroneously assumes the burden of proof as to a particular fact, the mistake will not be corrected in the appellate court. The action was one to recover damages for the unauthorized compromise of a judgment. The defense seems to have been that the judgment was comparatively worthless. In the trial plaintiff assumed the burden of proof as to the value of the judgment and undertook to prove that it was worth face value. Verdict and judgment for defendant. Plaintiff assigned as error the refusal "of the court to direct a verdict for the full amount of damages, as measured by the judgment and interest, on the ground that the presumption is that the judgment is worth its face value." This is held not to have been erroneous, "... for the plaintiff assumed that burden and undertook to show the actual value of the judgment. Plaintiff, instead of electing to stand on the theory on which he now bases error in the rulings of the court introduced affirmative evidence by which the actual value of the judgment was sought to be shown. Having elected so to do, he is in no position to complain of the acceptance by that court of his position. He is within the rule that 'where a party erroneously assumes the burden of proof as to a particular allegation, or the burden of evidence as to a particular fact, that mistake will not be corrected in the appellate court.'" Citing 16 Cyc., 26 (B); 2 Cyc., 675 (IX); *Geiser Mfg. Co. v. Yost*, 90 Minn., 47, 95 N. W. Rep., 584; *Earl Fruit Co. v. Thurston Co.*, 60 Minn., 351, 62 N. W. Rep., 439; *Benjamin v. Shea*, 83 Iowa, 392, 49 N. W. Rep., 989. And see *Denton v. C., R. I. & P. Ry. Co.*, 52 Iowa, 161, 2 N. W. Rep., 1093, 35 Am. Rep., 263; *Stewart v. Outhwaite*, 141 Mo., 562, 44 S. W. Rep., 326. "Where parties consent to try their case upon a certain theory of what the law is, though it be erroneous, they can not complain at the result, if it be correct according to that theory." *Davis v. Jacoby*, 54 Minn., 144, 55 N. W. Rep., 908. And see 66 C. L. J., 291. There is excellent authority for the proposition that where a case is tried on one theory, it can not be presented in the appellate court on another theory. In other words, having fixed on a theory, one must stand or fall on that theory.

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**Carriers—Delivery of Freight in Damaged Condition.**—Where a carrier delivers freight in a damaged condition, the presumption is that the damage occurred while in the carrier's possession. *Huggins v. Atlantic Coast Line R. Co.* (S. C.), 60 S. E. Rep., 694.

**Action for Medical Services; Claim for Loss of Business; Value Shown by Annual Income; Evidence; Hypothetical Questions.**

A contract for the services of a physician should not be construed as giving compensation for both services and necessary loss of time from other business, unless the language employed is susceptible of no other construction; and in that event the extraordinary character of the promise would render the testimony improbable, and require that it be supported by facts and circumstances to sustain a recovery.

In an action against executors by a physician to recover the value of professional services rendered a decedent, and also for loss of business on account of such attendance, it being shown that at times the plaintiff remained hours, and sometimes all night in such attendance, it is error to exclude evidence offered by defendants that on account of the family relation existing between plaintiff and the decedent the former and his family frequently visited at the residence of the latter and accepted his hospitality during part of the time for which charge was made, since such evidence tended to show that plaintiff's calls were prolonged beyond any necessity for medical attendance.

In such action evidence of plaintiff's annual income prior to the commencement of services to the decedent was admissible as tending to show the value of his time, and to be considered in estimating the compensation to be made for his services and time when absent from the city and in attendance upon the decedent; but evidence of plaintiff's receipts from his practice during the period of the rendition of these services, showing a falling off in business which may have been due to other causes was not admissible.

In an action to recover for medical services, it is improper to admit the testimony of experts based upon hypothetical questions reciting the decedent's declarations concerning the plaintiff's services, and indicating his satisfaction with the treatment, and that but for it he would have died.—*Syllabus in Rochester Daily Record in the case of Richard F. Burke, respondent, v. George B. Mulgrew et al., executors of Felix A. Mulgrew, deceased.*

**Lease; Injury by Fire; Termination.**

A lease for a room in a six-story building provided that if the "building or premises wherein said demised premises are contained" should be destroyed by fire, or so badly injured that they could not be repaired within sixty days, the lease should terminate; but that if the premises, "having been injured as aforesaid," should be repairable within sixty days, the lessor should repair with all reasonable speed, and the rent should cease during the time of making repairs, and that if only so slightly injured as not to be rendered unfit for occupancy, they should be repaired and the rent should cease. The United States Circuit Court of Appeals for the Sixth Circuit held, in construing the lease (*Levy v. Equitable Life Assurance Society*), that the provisions mentioned applied to the entire building, and that on an injury to the building by fire, which could not be repaired within sixty days, the lessor was entitled to terminate the lease although the demised portion was only slightly injured and not rendered unfit for occupancy.

**Evidence; Telephonic Communications.**  
[Central Law Journal.]

As science and civilization advances the law attempts to follow, if not as promptly as it should, at least not a great ways off. The case of *Knickerbocker Ice Co. v. Gardiner Dairy Co.* (69 Atl. Rep., 405) discusses the admissibility and effect of telephonic communications as evidence.

In that case the evidence of Mr. Wilbourn, superintendent of the Gardiner Company, in reference to a telephone conversation with the Knickerbocker Company, was admitted, subject to exception. He called up the company and inquired who was there, and the party at the phone said the Knickerbocker Ice Company. He did not recognize the voice of the person talking. The man at the phone stated the price of the ice, said they had plenty of it, and would let the plaintiff have it provided it gave them all its trade. The plaintiff got five or six loads that day (June 29th), and all the orders were by telephone. He had his talks with the same person, and in each case he got all the ice he ordered. One of defendant's exceptions was to the refusal to strike out that evidence.

The trial court admitted the evidence and the appellate court after reviewing the authorities upheld the action of the trial court, saying: "As it is a character of evidence that might be used improperly, courts should be careful in the application of the rule. In this case, however, we have no difficulty in sustaining the rulings of the lower court."

"The authorities amply sustain the decision in this case. In *Murphy v. Jack* (142 N. Y., 215, 36 N. E. Rep., 882, 40 Am. St. Rep., 590), which was an application to vacate an attachment which had been issued on an affidavit made on information over the telephone, the court said: 'There would be no objection to the information having been conveyed through the medium of the telephone if it had been made to appear that the affiant was acquainted with the plaintiff and recognized his voice, or if it had appeared, in some satisfactory way, that he knew it was the plaintiff who was speaking with him.' In *Wolfe v. Mo. Pac. R. Co.* (97 Mo., 473, 11 S. W. Rep., 49, 3 L. R. A., 539, 10 Am. St. Rep., 331), it was held that a conversation by telephone between a witness and another person in the private office of a party is not inadmissible because the witness does not identify the voice of the other person as that of the party or his clerk. *Barclay, J.*, said: 'When a person places himself in connection with the telephone system through an instrument in his office, he thereby invites communication in relation to his business through that channel. Conversations so held are as admissible in evidence as personal interviews by a customer with an unknown clerk in charge of an ordinary shop would be in relation to the business therein carried on.' See, also, *Mo. Pac. Ry. Co. v. Heidenheimer*, 82 Tex., 201, 17 S. W. Rep., 608, 27 Am. St. Rep., 861; *Gen. Hospital Soc. v. N. H. Rendering Co.*, 79 Conn., 581, 65 Atl. Rep., 1065; *Kan. City Star Co. v. Standard Warehouse Co.*, 123 Mo. App. 13, 99 S. W. Rep., 765; *Godair v. Ham. Nat. Bank*, 225 Ill., 572, 80 N. E. Rep., 407, 116 Am. St. Rep., 172; *Jones on Ev.*, sec. 210; *Wigmore on Ev.*, sec. 2155. The latter says: 'No one has ever contended that if the person first calling up is the very one to be identified, his mere purporting to be A. is sufficient, any

more than the mere purporting signature of A. to a letter would be sufficient. Ante, sec. 2148. The only case practically presented therefore is that of B.'s calling up A. and being answered by a person purporting to be A. There is much to be said for the circumstantial trustworthiness of mercantile custom (Ante, sec. 95) by which, in average experience, the numbers in the telephone directory do correspond to the stated names and addresses, and the operators do call up the correct number, and the person called does in fact answer. These circumstances suffice for some reliance in mercantile affairs; and it would seem safe enough to treat them in law as at least sufficient evidence to go to the jury, just as testimony based on prices current is received. Ante, sec. 719. This view has received some judicial support. The author then goes on to consider the case where the antiphonal speaker does not purport to be a particular person, but merely some member of the office staff authorized to make a contract or an admission and added: 'On the principle above suggested (though not with the same force) mercantile experience may well suffice, by which customarily the person who is in fact summoned to the telephone and proceeds to conduct the negotiation is prima facie a person authorized to do so, precisely as a person receiving money at the cashier's desk is presumably authorized to do so. Upon this point there is little judicial inclination to take the liberal view.'

#### Notes of Interesting Decisions.

**Accord and Satisfaction.**—The retention by an employee of a check given him by his employer upon the termination of the employment, reciting that it was the return in full of a cash bond given by the employee, less money wrongfully appropriated, is held, in *Demeules v. Jewel Tea Co.* (Minn.), 114 N. W., 733, 14 L. R. A. (N. S.), 954, not to constitute an accord and satisfaction, on the ground that the employer yielded no part of his claim and suffered no detriment by paying only what he admitted was due and payable.

**Attachment.**—An attachment based upon an affidavit made by the plaintiff's attorney is held, in *F. Mayer Boot & Shoe Co. v. Ferguson* (N. D.), 114 N. W., 1091, 14 L. R. A. (N. S.), 1126, to be sufficient if the facts are positively stated in the language of the statute, it being held unnecessary that the affidavit should disclose in addition thereto that the affiant possessed personal knowledge of such facts.

The words "secretary and treasurer" appended to the signature of an affidavit for attachment sued out on behalf of a corporation are held, in *Taylor v. Sutherlin-Meade Tobacco Co.* (107 Va., 787, 60 S. E., 132, 14 L. R. A. (N. S.), 1135), not to be sufficient, as matter of law, to show that the affidavit was within the requirements of a statute that it must be executed by the plaintiff, his agent or attorney.

Duly deposited funds of a bankrupt's estate are held, in *Rockland Sav. Bank v. Alden* (Me.), 68 Atl., 863, 14 L. R. A. (N. S.), 1220, to be in the possession of the court so as to prevent attachment even after distribution is ordered, and the checks have been drawn and countersigned, but not delivered, the custody of the law continuing until the trustee in bankruptcy actually pays the distributees the dividends awarded them.

**Contempt.**—The trial court's jurisdiction to punish for contempt the violation of an injunction forbidding a labor union to picket premises of complainants and to interfere with their business and employees is held, in *Barnes v. Chicago Typographical Union No. 16*, 232 Ill., 402, 83 N. E., 932, 14 L. R. A. (N. S.), 1150, not to be suspended by an appeal from the decree.

**Damages for Mental Suffering.**—A woman, who, in the exercise of reasonable care, passes the night in a railway station where rough looking men are sleeping on the floor, because of the failure of a telegraph company to deliver a message requesting friends to meet her on a midnight train, which on its face shows that the residence is three miles from the station, is held, in *Postal Tele. Cable Co. v. Terrell* (Ky.), 100 S. W., 292, 14 L. R. A. (N. S.), 927, to be entitled to hold the telegraph company liable for the mental suffering thereby caused.

Mental suffering from humiliation is held, in *Buenzle v. Newport Amusement Asso.* (R. I.), 68 Atl. 721, 14 L. R. A. (N. S.), 1242, not to be an element of damages in an action for breach of contract for refusing to admit a ticket holder to a dance hall because in the uniform of a petty officer of the United States Navy.

**Bailments.**—Under a contract of hire between bailor and bailee that the bailee shall return the property in as good condition as when received, or pay for it, it is held, in *Grady v. Schweinler* (N. Dak.), 113 N. W., 1031, 14 L. R. A. (N. S.), 1089, that the bailee becomes an insurer for the return of the property.

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FOUNDED 1789.

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(Late Solicitor-General of the United States),  
On the History and Development of Law and Comparative Jurisprudence, and on the History of the English Law.

HON. SETH SHEPARD, LL. D.

(Chief Justice of the Court of Appeals of the District of Columbia),

On the History of Constitutional Law and the Foundation of Civil Liberty.

REV. JOHN A. CONWAY, S. J.,

On Natural Law and Canon Law.

MUNROE SMITH, LL. D.

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On International Law and Foreign Relation of the United States.

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On Legal Ethics.

HON. D. W. BAKER, A. M., LL. M.

(United States Attorney for the District of Columbia),  
On General Practice and Exercises in Pleading and Evidence.

FREDERICK VAN DYNE

(Late Assistant Solicitor, Department of State),  
On Citizenship.

The thirty-eighth annual session opens Wednesday, September 30, 1908, at 6.30 p. m., in the Law School Building, 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

TUITION.....\$100.00

The Secretary will be at his office in the Law Building daily for information, enrolment, payment of fees, etc. Students proposing to connect themselves with the school are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1822 F street northwest, or upon application to the undersigned.

R. J. WATKINS,  
Secretary.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

## Legal Notices.

### FIRST INSERTION.

E. H. Thomas and Jas. Francis Smith, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re Condemnation of Land Necessary to Provide for an Addition to Monroe School, in the District of Columbia. District Court, No. 782.

On consideration of the petition of the Commissioners of the District of Columbia, filed in the above entitled cause, and on motion of counsel for said Commissioners, it is, by the court, this 14th day of September, A. D. 1908, ordered, that the clerk of this court issue a citation to John B. Lerner and Antonia P. Sickles, owners, to appear in this court on the 28th day of September, A. D. 1908, at 10 o'clock A. M., to answer said petition and to show cause why the prayers thereof should not be granted, and why lot numbered eight hundred and seventeen (817), lot number twenty-six (26), and lot numbered two (2), all in square numbered twenty-eight hundred and ninety (2890), as recorded, for purposes of assessment and taxation in the office of the surveyor of the District of Columbia, and more particularly described in the petition filed herein, should not be condemned for the purpose of providing a site for a four-room addition to the Monroe Public School in the District of Columbia. It is further ordered, that a copy of said citation be served by the United States marshal for the District of Columbia upon such owners of the land sought to be condemned herein, and such persons interested herein, as may be found by said marshal, or his deputies, within the District of Columbia; and it is further ordered, that all persons having any interest in these proceedings be, and they are hereby, warned, and required to appear in this court on or before the said 28th day of September, A. D. 1908, to answer said petition, and to continue in attendance until the court shall have made its final order, ratifying and confirming the award and report of the commissioners to be appointed by the court to appraise the value of the respective interests of all persons concerned in the land and premises mentioned and described in the aforesaid petition. It is further ordered that a copy of this order be published once in The Washington Law Reporter, and on six secular days in The Washington Evening Star, The Washington Post, and The Washington Herald, newspapers published in said District, before the said 28th day of September, A. D. 1908. By

[Seal] the Court: ASHLEY M. GOULD, Justice.  
A true copy. Test: J. K. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 88-11

George C. Shinn, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of September, 1908. FRANK C. STRATTON, 1018 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,491. Administration. [Seal.] 88-81

D. W. Baker, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court.  
No. 780.

In the matter of the condemnation of squares two hundred and twenty-six (226), two hundred and twenty-seven (227), two hundred and twenty-eight (228), two hundred and twenty-nine (229), and two hundred and thirty (230), in the city of Washington, in the District of Columbia, for use and accommodation of the United States Departments of State, Justice, and Commerce and Labor, it is ordered, this 16th day of September, A. D. 1908, that the order of publication heretofore issued and published in The Washington Star and The Washington Post and The Washington Law Reporter be amended by adding the following names: Henrietta Harvey Dyer, Margaret E. Long, Florence Dyer Berry, Daisy Dyer Howard, and Andrew J. Miller, and that said publication be continued as heretofore ordered. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. K. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 88-41



**Legal Notices.**

Thomas P. Woodward and W. Mosby Williams,  
Solicitors

**In the Supreme Court of the District of Columbia.**  
**John Kennedy, Complainant, v. Kunigunda Heisler et al. Equity, No. 27,980.**

The object of this suit is to establish that John Heisler and Kunigunda Heisler, his wife, signed the deed recorded in liber J. A. S. 22, folio 488, and to declare complainant's title perfect by adverse possession to the north 14 feet front on 7th street by the full depth that width of original lot 7 in square 447, situate in the city of Washington, in the District of Columbia, as more fully set forth in the bill. On motion of the complainant, it is, this 14th day of September, 1908, ordered that the defendant, Kunigunda Heisler, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of John Heisler, deceased, of Kunigunda Heisler, deceased, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after six weeks from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for the first four weeks prior to said rule day in The Washington Law Reporter, for good cause shown a longer

[Seal] period of publication being dispensed with.  
ASHLEY M. GOULD, Justice. A true copy.  
Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 38-3t

W. J. Lambert, Solicitor

**In the Supreme Court of the District of Columbia.**  
**Helen Von der Tann v. John B. Lybrook.**  
No. 28,002, Equity Doc. —

The object of this suit is to appoint a trustee or trustees with full power and authority to execute the trusts of the deed of trust, dated May 29th, 1905, and recorded in liber No. 2011, at folio 372 et seq., one of the land records of the District of Columbia, the trustees named in said deed of trust having died. On motion of the complainant, it is, this 15th day of September, 1908, ordered that the defendant, John B. Lybrook, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. 38-3t

Jos. A. Burkart, Attorney

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Marie F. Seltz, Deceased.**  
No. 15,331. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jos. A. Burkart, it is ordered, this 14th day of September, A. D. 1908, that Ida Seltz, and all others concerned, appear in said court on Tuesday, the 20th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return

[Seal] day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 38-3t

C. C. Calhoun, Attorney

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice.** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sylvanus E. Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1908. BERTHA B. JOHNSON, 1890 Vermont ave.; PHILANDER C. JOHNSON, care of The Evening Star. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,481. Admn. [Seal.] 38-3t

**Legal Notices.**

Robinson White, Attorney

**Supreme Court of the District of Columbia,**

**Holding Probate Court.**

**This is to Give Notice.** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. McDonald, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of September, 1908. GEORGIANNA McDONALD, 3327 Brightwood ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,572. Admn. [Seal.] 38-3t

Arthur Peter, Attorney

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice.** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George Bobinger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1908. LOUISE MARGRETT BOBINGER, Cabin John Hotel, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,180. Administration. [Seal.] 38-3t

R. Ross Perry, Jr., Attorney

**Supreme Court of the District of Columbia,**

**Holding Probate Court.**

**This is to Give Notice.** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Jane Perry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1908. R. ROSS PERRY, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,451. Admn. [Seal.] 38-3t

**SECOND INSERTION.**

Eugene A. Jones, Attorney

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice.** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William E. Herbert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. MONTREY T. HERBERT, 1121 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,467. Administration. [Seal.] 37-3t

Sheehy & Sheehy, Attorneys

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice.** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Nugent, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. REV. P. J. O'CONNELL, 1201 S. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,322. Administration. [Seal.] 37-3t

## Legal Notices.

C. W. Darr and Hayden Johnson, Solicitors

In the Supreme Court of the District of Columbia.  
 William T. Harvey, Complainant, v. Hugh T. Harvey  
 et al., Defendants. Equity No. 26,462.

Upon consideration of the petition and report of Charles W. Darr and Hayden Johnson, trustees, and the accompanying papers filed herein on the 10th day of September, A. D. 1908, that they have sold to Harry E. Gladmon for the purchase of houses No. 2222 I street N. W., and 2228 I street Northwest, the first of said properties being known as part of original lot numbered nine (9) in square fifty-five (55), containing within the following metes and bounds, viz: beginning for the same at a point on I street distant thirty (30) feet ten (10) inches east from the northwest corner of said lot and square, and running thence east twelve (12) feet; thence south seventy-five (75) feet, and thence west twelve (12) feet, and thence north seventy-five (75) feet to the place of beginning. Subject as to said part of lot nine (9) to a right of way over the rear eight (8) feet of said lot, for the use of the part of said lot nine (9) adjoining on the east, improved by a two-story frame dwelling, No. 2222 I street Northwest, for the sum of \$1,500, and for house No. 2228 I street N. W., known as part of original lot numbered nine (9) in square numbered fifty-five (55), containing within the following metes and bounds, viz: beginning for the same at the northwest corner of said lot and running thence east eighteen (18) feet ten (10) inches with the line of I street; thence south sixty-seven (67) feet to a private alley eight (8) feet wide, to be left open for the use of said lot, to 23d street across the south part of said lot; thence west eighteen (18) feet ten (10) inches to 23d street; thence north on said street sixty-seven (67) feet to the place of beginning, improved by a two-story frame dwelling, No. 2228 I street northwest, for the sum of \$2,000, it is, this 10th day of September, A. D. 1908, by the court, ordered, adjudged, and decreed that said sales be, and the same are hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of October, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Washington Herald once a week for three successive weeks before said last named day. By the Court: ASHLEY M. GOULD, Justice. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 87-31

Darr, Peyser &amp; Taylor, Attorneys

In the Supreme Court of the District of Columbia.

Jane Collins v. John Craven et al.  
 No. 27,978, Equity Dec. —.

The object of this suit is to partition by sale the estate of Michael Craven, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainant, it is this 10th day of September, 1908, ordered that the defendant, William Craven, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 87-31

Wilson &amp; Barksdale, Solicitors

In the Supreme Court of the District of Columbia,

Holding an Equity Court.

Mary Elizabeth Thompson et al. v. Virgil Thompson et al. Equity No. 27,728.

Andrew Wilson and Clarence E. King, trustees, having reported an offer from S. Oppenheimer of eighteen hundred dollars, cash, for the real estate decreed to be sold in this cause, it is, this 9th day of September, 1908, ordered that said trustees be, and they are hereby, authorized and directed to accept said offer and that the sale of said property will be ratified and confirmed on the 9th day of October, 1908, unless cause to the contrary be shown before said last mentioned day. Provided a copy of this order be published once a week for three successive weeks in Washington Law Reporter and The Washington Herald prior to the last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 87-31

[Seal] Justice blanks of every description for sale at this office.

## Legal Notices.

Kappler & Merillat, Attorneys  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Dean Biggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. WILLIAM H. SARDO, No. 408 H st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,486. Administration. [Seal.] 87-31

McNeil &amp; McNeil, Attorneys

In the Supreme Court of the District of Columbia.  
 N. M. Matthews & Company, Plaintiff, v. George T. Underwood, Defendant, and Alton F. White, Garnishee. At Law, No. 50,748.

ORDER OF PUBLICATION.

The object of this suit is to recover the sum of three hundred thirty-three and twelve one-hundredths dollars (\$333.12) with interest and costs, and to have a judgment for condemnation of certain property and credits of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 11th day of September, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 87-31

John B. Larnar, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry J. Mastbrook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,479. Administration. [Seal.] 87-31

THIRD INSERTION

M. J. Colbert and H. W. Schen, Solicitors  
 In the Supreme Court of the District of Columbia.  
 Mary A. Horrigan et al. v. The Unknown Heirs, etc., of John Peltz et al. Equity No. 27,911.

The object of this suit is to declare complainants title to be good in fee simple by adverse possession to the following described land and premises in the city of Washington, District of Columbia, to-wit: The east 17.83 feet front by the full depth of original lot three, in square five hundred and fifty-eight, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, it is this 19th day of August, 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of John Peltz, Alexander M. Peltz, and Michael B. Peltz, and the unknown heirs, alienees, and devisees of John Davis and Charles Glover, executors of John Peltz, cause their appearance to be entered herein on or before the first rule day, occurring after the expiration of two months from this date; otherwise the cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month for a period not less than three months. This order shall be published twice a month for two months in The Washington Law Reporter, the court not deeming it necessary for the same to be published in any other paper, and no other paper having been selected by the parties. [Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug 21-28, sept 18-25

**Legal Notices.**

Edwin L. Wilson, Attorney

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.Edwin L. Wilson v. Samuel Elliot, Junior, et al.  
Equity. No. 27,976.

The object of this suit is to establish title to the north 100 feet of lots 20, 21, and 22, by the full width thereof, and all of lots 23 and 24, in square 388, in the city of Washington, District of Columbia, to be good in fee simple in complainant by reason of adverse possession thereof for more twenty years. On motion of the complainant, it is this 2d day of September, A. D., 1908, ordered that the defendants, Samuel Elliot, Junior, Thomas Bulfinch, Harriet A. Deming, Thomas W. Pairo, and Buckner Bayless, if living, or, if any of said defendants be dead, the unknown heirs, allenees, and devisees, if any, of those who are dead, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of two months from this date, good cause for fixing such time having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks for the first month, and twice a month for the second and succeeding month thereof in The Washington Law Reporter and The Washington Herald. By the Court:

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept 4, 11, 18; oct 2, 9; nov 6, 18

Leo P. Harlow, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel J. Bragunier, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of September, 1908. JOHN D. BRAGUNIER, 411 M st. N. E. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,248. Administration. [Seal.] 36-St

B. F. Leighton, Solicitor

In the Supreme Court of the District of Columbia.  
Charles J. Bell, James R. Garfield, Complainants, v.  
Charles Oram Lander Young et al., Defendants.  
In Equity. No. 27,762.

The object of this suit is to require the defendants to interplead and settle their rights and conflicting claims to a legacy of \$13,000 bequeathed to the defendant, Charles O. L. Young, by the will of the late Jean M. D. Lander (duly admitted to probate by the Probate Court of this District), and to the securities set apart by the executors and trustees of said will, the complainants in this suit, in satisfaction thereof, and to the unpaid income arising from said legacy and said securities, and to all interest therein and thereunder, and to permit the complainants to pay and deposit in the registry of this court all cash in their hands arising from said legacy and securities and the securities themselves, and that the defendants and each of them may be enjoined and restrained from commencing any suits either at law or in equity against the complainants touching said matters and upon the payment of said money and the deposit of said securities in the registry of this court by the complainants, and upon their procuring said defendants to interplead, said complainants may be discharged from all liability to said defendants or either of them in the premises, and that said complainants may have their costs herein. On motion of complainants it is this 31st day of August, 1908, ordered that the defendants, Charles Oram Lander Young, Charles Chandos Weatherley, Abraham Bolland, Lillian Frances Martha Bridge, Reginald C. Hassett, and Henry William Henniker Rance, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 36-St

**Legal Notices.**

William K. Quinter, Solicitor

In the Supreme Court of the District of Columbia,  
John J. Hogan, Complainant, v. Charles H. Swan  
et al., Defendants. Equity. No. 27,987.

The object of this suit is to establish title in the complainant by adverse possession to part of original lot 4, in square 280, in the city of Washington, District of Columbia, beginning for the same at the northeast corner of said lot and running thence south 70 feet 6 inches; thence west 11 feet 8 1/2 inches, more or less, to center of a party wall; thence northerly along the center of said party wall 70 feet 6 inches to the rear line of original lot 4; thence east along said rear line to the place of beginning. On motion of the complainant, it is, this 2d day of September, 1908, ordered that the defendants, Charles H. Swan, trustee under the last will and testament of Ellen M. Washburn, deceased; New England Hospital for Women and Children, a corporation; Charles H. Swan, executor under the last will and testament of Laura M. Moore, deceased; John L. Barnard, Mary C. E. Barnard, Caroline A. Sayward, William W. Swan, and Charles H. Swan, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day.

[Seal] WENDELL P. STAFFORD, Justice. True copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 36-St

Ralston &amp; Siddons, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Marion S. F. Jouy, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of August, 1908. FREDK L. SIDDONS, Bond Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,425. Administration. [Seal.] 36-St

John E. Taylor, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Torrey, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of August, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of August, 1908. ADAMS TORREY, 3014 11th st. N. W. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,471. Administration. [Seal.] 36-St

Jas. L. McNeill, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Dora B. Sims, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of June, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of September, 1908. JOHN SIMS, U. S. Senate. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,384. Administration. [Seal.] 36-St

Justice blanks of every description for sale at this office.

**Legal Notices.**

Edwin L. Wilson, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

Estate of Annie V. Brown, Deceased.

No. 15,460. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by William J. Brown, it is ordered this 1st day of September, A. D. 1908, that Mary E. League, Michael P. Coakley, William Coakley, James J. Coakley, and Daniel Coakley, and all others concerned, appear in said court on Monday, the 5th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

36-3t

W. Lee Helms, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

Estate of Reinhold F. de Grain, Deceased.

No. 15,460. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Maria de Grain, widow of said Reinhold F. de Grain, it is ordered, this 2d day of September, A. D. 1908, that Clara de Grain, Emma de Grain, Annie de Grain, Eliza de Grain, Edward de Grain, and all others concerned, appear in said court on Monday, the 5th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WENDELL P. STAFFORD, Justice. Attest: Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

36-3t

J. J. Darlington and Leon Tobriner, Attorneys

Supreme Court of the District of Columbia,

Holding a Probate Court.

In re Christiana Strauss, Deceased.

Adm. No. 15,226.

Application having been made for the probate of the last will and testament of said deceased and for letters testamentary on said estate by Hugh A. Kane, the executor therein named, it is ordered this 28th day of August, A. D. 1908, that Leo Siebel, and all others concerned, appear in said court on Monday, the 28th day of September, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] By the Court: WENDALL P. STAFFORD, Justice. A true copy. Attest: James Tanner, Register of Wills.

36-3t

Edward A. Newman, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Helge G. Forsberg, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 21st day of September, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 1st day of September, 1908. GUSTAVE W. FORSBERG, 8th and Water sts. S. W., by Edward A. Newman, Attorney. Attest: WM. C. TAYLOR, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,908. Administration. [Seal.]

36-3t

**Legal Notices.****FOURTH INSERTION.**

C. S. Hillyer, Solicitor

In the Supreme Court of the District of Columbia.  
Virginia M. Davis, Complainant, v. The Unknown Heirs, devisees, and Allenees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, Defendants. No. 27,933. Equity Doc. —.

The object of this suit is to declare complainant's title perfect, by adverse possession, to the following described lands, premises, easements, and appurtenances, in the District of Columbia and city of Washington: Part of original lot numbered seven (7), in square numbered nine hundred and four, contained within the following metes and bounds, viz, beginning for the same at a point distant twenty-four (24) feet four (4) inches north from the southwest corner of said lot and running thence north along the line of Seventh street east, eighteen (18) feet eight (8) inches; thence east, one hundred and nine (109) feet one (1) inch; thence south, eighteen (18) feet eight (8) inches, and thence west, one hundred and nine (109) feet one (1) inch, to the place of beginning. On motion of the complainant, it is, this 7th day of August, 1908, ordered that the defendants, the unknown heirs, devisees, and allenees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. (Signed) JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 14-21, sept. 11-18, oct. 9-16.

D. W. Baker, Solicitor

In the Supreme Court of the District of Columbia,

Holding a Special Term as a District Court.

No. 780.

In the Matter of the Condemnation of Squares Two Hundred and Twenty-six (226), Two Hundred and Twenty-seven (227), Two Hundred and Twenty-eight (228), Two Hundred and Twenty-nine (229), and Two Hundred and Thirty (230), in the City of Washington in the District of Columbia, for Use and Accommodation of the United States Departments of State, Justice, and Commerce and Labor.

Upon consideration of the petition filed herein by the United States of America, through Daniel W. Baker, on behalf of the Attorney-General of the United States, seeking the condemnation of all of squares 226, 227, 228, 229, and 230, in the city of Washington, in the District of Columbia, for the use of the United States Departments of State, Justice, and Commerce and Labor, in conformity with the act of Congress approved May 30th, A. D. 1908, entitled, "An Act to increase the limit of cost of certain public buildings; to authorize the enlargement, extension, remodeling and improving of certain public buildings; to authorize the erection and completion of public buildings; to authorize the purchase of sites for public buildings; and for other purposes," it is by the court this 24th day of August, A. D. 1908, ordered, that The Grand Opera House Co. (a body corporate), Plimpton B. Chase, Arthur A. Birney, Gasherie DeWitt, and Ezra D. Parker (trustees), Orren G. Staples, Eugene W. Wheeler, Duparquet, Huot & Moneuse Co. (a body corporate), Arthur T. Brice and William J. Flather (trustees), Samuel G. Cornwell, Willard Hotel Co. (a body corporate), Annie F. Murphy, George H. Kyd (surviving trustee), William D. Hoover (trustee), Milton E. Alles (trustee), Mrs. Anne C. Snyder, John D. Barnes, Baltimore American Newspaper Co. (a body corporate), J. Forbes Beale, Albert W. Ward, James Cunningham, George H. Higbee, John M. Davis, Florentine Cafe Co. (incorporated), William E. Edmondston and Murray A. Cobb (trustees), Antonia P. Sickle, Edward J. Gardiner, Miranda Fraser, Rufus H. Darby Printing Co. (a body corporate), National Engraving Co. (a body corporate), Edward H. Thomas and John L. Proslie (trustees), Edwin H. Neumeyer, Israel Little, Jerome Mazzochi, Guy H. Johnson and John C. Gittings (trustees), Anthony J. Clark, Dennis Mullaney, Elizabeth Trimble, Marion Frances Clark, Elizabeth Naylor (otherwise called Bettie G. Naylor), Robert Brown, Dennis J. McCarthy, The District of Columbia, Milton Smith, Benjamin F. McCaulley, Frances M. Miller, Frederick W. Grenfell, Walter E. Wilcox and George F. Hane (trustees), The Central Dispensary and Emergency Hospital (a body corporate), American Security and Trust Co. (trustee), Edwin P. Jones, Kate Mitchell, Ella Davis, Etta Coleman, Margaretta Lavinia Naylor,

## Legal Notices.

James E. Grass, The Capital Bicycle Club (a body corporate), Union Trust Co., of District of Columbia, (trustees), William B. Hibbs and Benjamin S. Graves (trustees), Henry Ulke, Meyer Cohen and Adolph H. Wolf (trustees), William F. Hall, Edwin H. Pillsbury (trustee), Conrad Becker, Clara Solomon, George A. Williamson, Walter F. Williamson, Mary Ann Alken, Rena Williamson, John T. Williamson, Joseph Peyton, Harry J. Eisenbeiss, George M. Emmerich and Douglas S. Mackall (trustees), J. H. William Kettler, Daniel Cox, Thomas C. Wilson, John C. Wilson, Margaret Wilson, Edward L. Wittstatt, Thomas McLaughlin, Nannie McLaughlin, Walter Mountjoy, Lamar Gatewood, Aleyne A. Fisher, Albert Gainoly, Herman E. Gasch and Harry C. Birge (trustees), Andrew B. Graham, The Globe Printing Co. (a body corporate), Union Trust and Storage Co., of District of Columbia (trustee), Myer B. Newman, Lee Dorsey, Samuel C. Gelbert, Allen Dixon, Joseph Hawkins, Joseph Sansone, John Henry Weisenborn and Caroline Weisenborn (his wife), Leo Sansone, John Badgaluppi, Sindone Salvarran, Lavina Norton, Louis Fugazzi, Frances M. Clark (otherwise called Marion Frances Clark), Attilio Viazzi, Giovanni Lavazo, Heirs at law of William H. Birch, Mary E. Acton, Harvey J. McGowan, Jesse A. McGowan, Pinkney B. Havenner and Leonard J. Mather (trustees), James L. Norris and John B. Wight (trustees), Elizabeth J. Miller, John B. Larner and J. Edward Chapman (trustees), Bladen Forrest, James Keith Forrest, Edwin Forrest, Albert Dulaney Forrest, Thomas R. Keith Forrest, Mary Helen Forrest, Irene E. D. McSherry, Justin M. Chamberlain and Oscar Luckett (trustees), Welford B. Rand and James E. Padgett (trustees), C. Clinton James and Charles Bendheim (substituted trustees), Martha Scott (executrix), Elizabeth Emily Davidson, George Albert Davidson, Margaret Ann Parker, Mary Elizabeth Davidson, Emma M. Sensenay, Samuel Blue, Elizabeth Schneider, Charles Schneider, David Schneider, Susanna A. Moreland, John Taylor, John Sansone, Lewis P. Shoemaker and Albert F. Fox (trustees), J. Edward Chapman, E. Welsh Ashford and Elmer E. Ramey (trustees), Charles F. Benjamin and Roger T. Mitchell (trustees), Matthew C. Byrne, Lucy C. Byrne, Julia M. Byrne, Mary Pical, Bartholomew Manlin, Lizzie M. Walter, Frederick Walter, Francis Freschi, Daniel J. Burke, Michael Gatti, Henrietta Easton, Joseph T. Byrne, Giulio Esparti, Isaac Mendelssohn, Christian Heinrich, D. Edward Fitzgerald, Alexander H. Bell and Clarence Walmsley (trustees), Mary Elgin, Louise Joyce, Nellie Atkinson, John L. Joyce, Jessie McGlinchey, Frances M. Miller, Mary L. Dempsey, Amanda J. Thorne, Margaret V. Joyce, George W. Joyce, Robert Edwin Joyce, Nellie Joyce, Andrew J. Joyce 3rd, Mary F. Casody, Frederick Casody, Fred S. Smith (assignee), Malcolm Huffy, William H. Manogue, Jennie Center, Walter Wilson, Victoria McClelland, Sarah W. Russell, John Gallant, George Whitney White and Ross Thompson (trustees), Samuel Gassenheimer, Washington Electric Vehicle Transportation Co. (a body corporate), John Cassels and Mahlon Ashford (trustees), Jacob O. Viehmeyer, Maggie E. McElvane, Emma F. Ellis, May Viehmeyer, Jacob O. Viehmeyer (executor and trustee), Christiana Hosch, William Burnett, John P. Hohman, Ella Mitchell, Jennie Atkins, Catherine Louise Sheehan, George A. Gray, Lewis D. Myerly, Ida Drury, Ora Angier, Mabel Gray, Clara Minor, Thomas F. Waggaman and Irving Williamson (trustees), William F. Quicksall and William S. McCarthy (trustees), E. Keller Houser, Ida Templein (otherwise called Pauline Hall), Stephen Gatti, Seraphine A. Gatti, Gladys Ryan, Charles E. Banes and John W. Brawner (trustees), Emma F. Benjamin (otherwise known as Mrs. Willie Gillmore), Violet Monroe, Washington Loan & Trust Co. (trustees), Hazel Saunders, Randolph T. Warwick, Edna Mantell, Arthur C. Moses, Dorothy Wells, Thelma McNeil, David Moore and R. Golden Donaldson (trustees), Robert J. Kirkpatrick and Charles W. Simpson (trustees), Ray Gilbert, May Gray, J. Sprigg Pool and William A. Hill (trustees), Washington City Orphan Asylum of the D. C. Children's Hospital of the D. C., James S. Harvey, B. Fenwick Harvey, Margaret R. Harvey, Daisy Dyer, Adell Dyer, Harvey Dyer, Tarbell Dyer, Etta Dyer, Frances L. Dyer, Florence E. Dyer, James S. Harvey and B. Fenwick Harvey (trustees), Lincoln L. Pitsnogle, William T. Powell, Albert A. Wilson (trustee), Arthur L. Cline, Calvin Cain, William Pierce, S. Louise Doubleday, Frank V. Hagerty, W. B. Moses & Sons (Incorporated), William Sauter, William F. Sauter, George R. Sauter, and all other persons owning, occupying, or claiming any title, interest, or lien in or upon any of the said several parcels of land situated in the said squares aforesaid, which are sought to be condemned herein, be and they are hereby required to appear in this court and answer the exigencies of the said petition on or before

## Legal Notices.

the 1st day of October, A. D. 1908, at 10 o'clock A. M., at which time the court will proceed with the matter of the condemnation of the above-described parcels of property. Provided, however, that a copy of this order be published twice a week for five weeks commencing Tuesday, August 25th, A. D. 1908, in The Washington Post and The Evening Star and once a week in The Washington Law Reporter for four weeks.  
[Seal] By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 85-41

D. W. Baker, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court.  
No. 781.

In the Matter of the Condemnation of Squares Numbered Sixty-three (63) and Eighty-nine (89) in the City of Washington in the District of Columbia, for the Use and Accommodation of the United States for Continuing the Improvement of Potomac Park.

Upon consideration of the petition filed herein by the United States of America, through Daniel W. Baker, on behalf of the Attorney-General of the United States, seeking the condemnation of all of squares 63 and 89 in the city of Washington, in the District of Columbia, for the use and accommodation of the United States for continuing the improvement of Potomac Park, in conformity with the act of Congress approved May 27th, A. D. 1908, entitled, "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1909, and for other purposes," it is by the court this 24th day of August, A. D. 1908, ordered, that Heirs of John Allen, Heirs of Bernard Gilpin, Heirs of Edmond Hanly, Edmund Hanly, Mary J. Dashiell, Anna Brown, Joshua Warfield, Joshua N. Warfield, Heirs of Battis Font, Michael Nichols, Heirs of Michael Nichols, Christian Kemp, Heirs of Christian Kemp, Robert Allison, Heirs of Robert Allison, Margaret J. Stone (trustee), The Chesapeake & Ohio Canal Co. (a body corporate), Joseph Bryan and Hugh L. Bond, Jr. (surviving trustees), James B. Nicholson, Myer B. Newman, Don A. Sanford, Oliver R. Harr, W. W. Edwards, John Camp, Heirs of John Camp, Charles A. McEuen, Emma L. Yoder, Malcolm Huffy, Charles T. Yoder, Columbia College (now George Washington University), Rose L. Easby and Fanny B. Easby (trustees), Rose L. Easby, Fanny B. Easby, Rosina H. Easby, and James S. Easby-Smith (trustees), William Easby, Thomas B. Easby, Harriet M. Easby, Marian C. Valk, Louisa B. Valk, Catherine S. Cole, Esther R. Brooke, Elizabeth B. Easby, Theodore F. S. King, Harry B. King, Alexius S. King, William H. Linkins, Wilhelmina M. Easby-Smith, Wilton J. Lambert, James Montgomery (trustee), Heirs of Amos Smith, Elizabeth Glass, Cassandra Wright, Amos S. Wright, William A. K. Wright, Fricilla Ramsey, Alfred Matthis, Benjamin Matthis, William Peak, Mary Peak, Elizabeth Brown, Susan McIntosh, Joseph Matthis, George Matthis, Heely McIntosh, Adeline Boren, Isaac Smith, Joseph Smith, Heirs of Millitus Thomas Kirk, Heirs of Ferdinando Fairfax, Heirs of George Swingle, Heirs of Jacob Hoffman, Jr., Howe Totten, Edith Totten, Gerald H. Totten, Mary Howe Totten, Sarah B. Moore, Lilly C. Stone, Louis W. Moore, Heirs of John Kephart, Heirs of Henry Yoel (or Joel), Watson J. Newton, Augustus Burdort, C. H. Wiltale, Richard Galtier, Martha S. King, Mary Cecilia King, May King, and Thomas King (minor), and all other persons owning, occupying, or claiming any title, interest, or lien in or upon any of the said several parcels of land situated in the said squares aforesaid, which are sought to be condemned herein, be and they are hereby required to appear in this court and answer the exigencies of the said petition on or before the 1st day of October, A. D. 1908, at 10 o'clock A. M., at which time the court will proceed with the matter of the condemnation of the above-described parcels of property. Provided, however, that a copy of this order be published twice a week for five weeks, commencing Tuesday, August 25th, A. D. 1908, in The Washington Post and The Evening Star, and once a week in The Washington Law Reporter for four weeks. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 85-41

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WASHINGTON, D. C. - - - - - SEPTEMBER 25, 1908

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### Compensation of Federal Employees for Injuries Sustained in Course of Employment.

The act of Congress of May 30, 1908, granting to certain employees of the United States the right to receive compensation for injuries sustained in the course of their employment, is a measure of great importance in the domain of labor legislation. The act went into effect on August 1, 1908. Prior to that time compensation had been paid only in cases of injuries to persons employed in the railway mail service and the life-saving service. The new law embraces within its provisions persons employed by the Government as artisans or laborers in arsenals and navy yards, river and harbor construction, fortifications construction, hazardous employment in the reclamation service, in the Panama Canal service, and in Government manufacturing establishments. It is estimated that fully 75,000 employees come within the provisions of the act. Compensation will be paid for such injuries as are received in the course of employment, and which cause disability for a period of more than 15 days; but the neglect or misconduct of the employee injured will preclude him from receiving compensation. The compensation provided for by the act is the payment during the continuance of the disability, but not for more than one

year, of the same pay received by the employee at the time of the injury. If death results, and the employee leaves a widow or children under the age of 18 years, the same amount of compensation will be paid to these dependent relatives during the same period.

Questions as to the right to such compensation will not be tried in the courts, but will be heard by the Secretary of Commerce and Labor, who is also to determine questions of negligence or misconduct. Cases of injuries coming under the act must be reported to him, and no compensation will be paid unless he is notified of the accident not later than the second day thereafter, nor unless application, accompanied by a physician's certificate, is filed with the Secretary within 15 days after the accident. In the event of death, application must be made in 90 days.

The Department of Commerce and Labor has prepared and issued rules and regulations governing the procedure in such cases, together with the necessary blanks and forms, which have been distributed among the various government offices employing persons who come under the provisions of the act. Those desiring further information in regard to these matters can doubtless secure copies of these regulations and forms on application to the Government departments.

### Equity Practice; Taking of Testimony by Examiner; Objections to Evidence as Irrelevant.

An interesting question of practice was presented to Mr. Chief Justice Clabaugh, holding the Equity Court, in the case of Buck Stove and Range Co. v. American Federation of Labor et al., during the present week. A petition was presented by the complainant asking that certain officials of the Federation of Labor be adjudged guilty of contempt in violating an injunction previously granted in the case, and upon the answer of the respondents the matter was referred to an examiner for the taking of testimony. In the course of the proceedings before the examiner certain questions were propounded to Mr. Samuel Gompers, one of the respondents, who, on the advice of his counsel, declined to answer them on the ground that the matters sought to be elicited by the questions were irrelevant and immaterial; and at the request of complainant the questions were certified to the court for its determination as to whether or not an answer should be compelled. It was contended for the complainant that, in the taking of testimony before an examiner, evidence could not be excluded on the ground of its immateriality or irrelevancy, even though the court of first instance might hold the objection well taken, inasmuch as the party offering the testimony was entitled to



have the judgment of the appellate court on that point. This contention was denied by counsel for the respondents, who further contended that there had been no violation of the injunction in the matters sought to be brought out by the evidence. The court held that the evidence called for by the questions was relevant, and directed that the questions should be answered.

#### Connecting Carriers; Tickets; Presumptions.

In *Clemmens v. Washington Park Steamboat Company*, decided by the U. S. Circuit Court for the Eastern District of Pennsylvania (162 Fed., 815), it was held that where plaintiff purchased a ticket from the defendant steamboat company entitling her to ride by steamboat to a pier or landing at a park, and by trolley from the pier to the centre of the park, there being no coupon or other statement on the ticket to indicate that any part of the contract was to be performed by any other carrier than the defendant, it would be presumed that plaintiff was to be under defendant's care during the whole trip, and the burden was on defendant to show that such was not the fact, and that the trolley car was managed by another carrier, for whose negligence defendant was not responsible. Where plaintiff purchased a ticket which on its face indicated that defendant steamboat company controlled the transportation by steamboat and trolley to plaintiff's destination, and defendant, in an action for injuries to plaintiff on the trolley road, introduced certain testimony showing that the trolley was operated by another company, whether such was the fact was for the jury.

The plaintiff obtained a verdict, and motions were made by defendant for new trial and for judgment, notwithstanding the verdict.

The court said:

In my opinion judgment notwithstanding the verdict can not be entered in favor of the defendant company. The verdict has established its negligence, and also its liability as master for the conduct of the motorman, and the sole question, therefore, upon this motion for judgment, is whether there was sufficient evidence concerning its liability for the motorman's conduct to require the point to be submitted to the jury. As I think, such evidence was present, and could not be disregarded as trivial. The plaintiff's ticket was a single contract, both in form and substance, entered into with the defendant alone, which entitled her to a ride by steamboat to the pier or landing at Washington Park, and also to a ride by trolley from the pier to the center of the park. There was no separate coupon upon which her right to be transported by the car depended, and there was nothing else upon the face of the ticket to suggest that any part of the contract was to be performed by any other carrier than the defendant. The presumption, therefore, arose that she

was to be (in legal contemplation) under the defendant's care and oversight during the whole trip between Philadelphia and the park. It is true that the defendant, in the effort to shift liability from its own shoulders to the shoulders of another, offered evidence tending to rebut this presumption, and to prove that the trolley car was managed and controlled by the Washington Park Amusement Company. But, while the evidence thus offered—unsatisfactory as it was, and especially when one considers that more and better evidence must have been at the defendant's command—might have had the desired effect, if it had been conceded to be true or had been accepted by the jury, it must not be forgotten that the credibility of the principal witness was denied in argument, and was a matter exclusively for the jury, and also that the presumption of the defendant's liability, arising upon the face of the ticket, was equivalent to testimony in the plaintiff's favor, and thus presented a controversy concerning the vital fact of the steamboat company's relation to the motorman, which no other tribunal than a jury could properly solve.

**Attorneys.**—An oral agreement by one suing to cancel a satisfied mortgage as a cloud on his title, to transfer to his attorney a portion of the property in case of success in the suit, is held, in *Stearns v. Wollenberg* (Oreg.), 92 Pac., 1079, 14 L. R. A. (N. S.), 1095, to confer upon the attorney no right in the cause of action which the court can protect.

A provision in a contract by an attorney to conduct litigation for a contingent compensation, forbidding the client to settle the claim without his consent, is held, in *re Snyder* (190 N. Y., 66, 82 N. E., 742, 14 L. R. A. (N. S.), 1101), to be void as against public policy.

So, also, in *Kansas City Elev. R. Co. v. Service* (Kans.), 94 Pac., 262, 14 L. R. A. (N. S.), 1105, it is held that an agreement between a client and his attorney for the services of the latter in conducting a proposed lawsuit wherein it is agreed that the client shall not settle, compromise, or otherwise dispose of the cause of action without the written consent of the attorney, is contrary to public policy and void.

The right to recover excessive fees exacted by attorneys from a client under an illegal contract for compensation is sustained in *Donaldson v. Eaton* (Iowa), 114 N. W., 19, 14 L. R. A. (N. S.), 1168, although voluntarily paid.

**Bills and Notes.**—Under the negotiable instruments law, it is held, in *Rockfield v. First Nat. Bank*, 77 Ohio St., 311, 83 N. E., 392, 14 L. R. A. (N. S.), 842, that a third person placing his name on the back of a promissory note by blank indorsement before or at the time of delivery is an indorser, and can not be held in any other capacity.

So, in *Deahy v. Choquet* (R. I.), 67 Atl., 421, 14 L. R. A. (N. S.), 847, it is held that persons who place their names on the back of a note before its delivery are indorsers, entitled to notice of dishonor, under that section of the negotiable instruments law providing that the person primarily liable on the note is one who, by its terms, is absolutely required to pay the same, all others being secondarily liable, and that a person who places his signature on the note otherwise than as a maker is deemed an indorser.

**Do the Married Women's Acts Permit a Personal Judgment to be Rendered Against a Married Woman Garnished for her Husband's Debt.**

[Central Law Journal.]

Our various Married Women's Acts which have attempted to remove some, if not all, of the common law disabilities of married women, have involved the courts in much confusion. Possibly the unfriendly attitude of the courts toward this legislation is responsible for some of the difficulty in which they often find themselves in determining the status of married women under these modern statutes.

A federal district court had occasion recently to wrestle with the Arkansas Married Women's Act, and the decision of the court assumes the hostile attitude which is taken by nearly all the courts towards this legislation, and practically retains the common-law disabilities of married women in spite of the statute, at least so far as they relate to actions between husband and wife, or actions by third persons to reach property of the husband in the wife's possession.

The case to which we refer in the preceding paragraph is that of *Allen-West Commission Co. v. Grumbles* (161 Fed., 461), where it was held that a personal judgment could not be rendered against a married woman garnished for her husband's debt. In that case the attempt was made to reach, by garnishment, money which the wife had obtained by the sale of some of her husband's personalty. On the garnishment proceedings it was shown that at the time of the service of the garnishment the wife had in her possession the property sought to be reached, but afterwards turned it over to her husband. The plaintiff sought to secure a personal judgment against the wife, but the court held this to be impossible, even though the statute permitted married women to sue and be sued, on the ground that the husband was not given the right by such a statute to sue his wife, and, therefore, since the creditor can not recover from the garnishee if the debtor himself could not, the plaintiff's action against the wife of the debtor for a personal judgment must fail.

While the argument of Judge Rogers in this case is apparently irresistible in its logic, we desire to call attention to a practical difficulty which such a construction of our Married Women's Acts raises, to wit: that it enables a wife to assert her common-law disabilities whenever she is sued, or where for any other reason such assertion is desirable, but dignifies her with all the rights of a person *sui juris* when she, herself, comes to sue or to engage in business, or to enforce her contracts or her right to hold property. At common law a creditor could attach any personal property in the possession of the wife for the husband's debts (*Miles v. Williams*, 1 P. Wms, 249), but under the Married Women's Acts the wife's personalty is exempt from executions against the husband (21 Cyc., 1585). A creditor is therefore in a worse situation so far as regards the husband's or wife's personal property which may pass so readily from one to the other than he was before the disabilities of coverture were removed.

Take the situation in the principal case as an instance. A wife sells some of her husband's personalty and receives the money therefor. At common law the creditor need not wait a minute; he can order the sheriff to seize the property, or

the proceeds, as the husband's, under an attachment against the husband. Under our Married Women's Acts this procedure is impossible. The wife is *sui juris* to the extent, at least, that she can now receive personal property from her husband, and can hold it in her own right free from the control of her husband and from seizure under execution or attachment for his indebtedness. Such statutes make it necessary, in order for the creditor to reach personal property belonging to the husband in the hands of the wife to summon her as garnishee. Then, if he can not go further and compel her to respond personally where she is proven to have been possessed of the personalty sought to be reached, and refuses to turn it over or to make satisfactory disclosure, opportunities for gross injustice are afforded under the protection of law.

Moreover, even if the husband could sue his wife under any of the Married Women's Acts, he could not recover from her a valid gift of personalty, even where made without consideration. But, would the court in the principal case have said in such a case, that the wife could not have been summoned as garnishee and judgment rendered against her, simply on the ground that the debtor could not have recovered the gift from his wife in an action against her? No, because Judge Rogers specially excepts such a case, saying: "The rule that a plaintiff by garnishment can not place himself in a superior position as regards a recovery than is occupied by the principal defendant is subject, under the weight of modern decisions, to the exception that, where one is in possession of property of another upon a contract which was fraudulent as to creditors, it may, in his hands, be reached by garnishment." Why, then, make an exception in a case where under statute or judicial construction the husband or wife are not permitted to sue one another? A gift of personalty by the husband to the wife may be good as to all the world except as to the husband's creditors. The latter's action against the wife in the form of a garnishment proceeding is more in the nature of an action to declare such a conveyance fraudulent, and to seize it for the creditor's protection. Garnishee process, however, is the only effective process in such cases. It does the creditor no benefit to have the wife return the gift to her husband. He must be permitted either to seize it in her possession as the property of the debtor or to hold her personally responsible as garnishee for the value of the personalty which she thus holds at the time of the service of the garnishment process.

We believe that the Maryland Supreme Court in the case of *Odend'hal v. Devlin*, 48 Md., 440, reaches the right conclusion on this question. In this case the process was reversed, to wit, the wife's creditors were attempting to garnishee a gift of personalty in the husband's possession. The principle, however, is the same, as objection was there made that since the wife could not sue the husband, the latter could not be reached as garnishee by the wife's creditors. The court in sustaining a judgment against the husband used this language: "The marital relations in this State have been materially changed by the Code so far as rights of property are concerned. The wife may be seized of the legal estate in lands, and she may hold the legal property in personalty, in her own right; no

trustee being necessary, and, in respect to property held to her sole and separate use, she has the right to resort to courts of law or equity for its protection. A married woman carrying on business in her own name as a sole trader contracts debts in respect to her business as if she were a feme sole. The remedy given to her creditors for the recovery of debts due them, by the process of attachments against her property, and credits, would be nugatory and worthless, if she could be permitted to place her funds or property in the hands of her husband, and it should be held that an attachment of this kind could not be laid in his hands as garnishee."

—♦—  
**Carriers; Contributory Negligence; Riding on Platform.**

In *Chicago Great Western Ry. Co. v. Mohaupt*, decided by the United States Circuit Court of Appeals for the Eighth Circuit (162 Fed., 665), it was held that an adult person traveling on a railroad train, who, several blocks before the train reached a station, and while it was moving at a speed of 10 miles an hour, voluntarily and without necessity left the car in which he was seated and stood upon the open platform, and while so riding was killed in a collision with another train standing at the station, no passengers in the cars being seriously injured, was chargeable with contributory negligence which precluded a recovery from the company for his death. The court said in part:

There is no substantial proof that defendant had any reasonable ground or excuse for riding on the platform of the car. The smoking car in which he had been riding before he took his position on the platform afforded him ample room and accommodation. There were but few passengers in it. So, likewise, the car next to the smoking car and immediately behind the platform on which he was standing contained many vacant seats, in any one of which he could comfortably and conveniently have ridden into the station. If he had remained in the smoking car where he was, he would have been uninjured, as no one there was hurt by the collision. He was an experienced brakeman and selected the dangerous place upon the platform when other safe and convenient places were available to him. Instead of relying on the well-established rule of law and practice which require railway companies to bring their passenger trains to a full stop at stations and remain so until all persons have had a reasonable opportunity to alight and remain inside the car until it arrived at the station, for some unexplained reason he voluntarily and without any compulsion or inducement by defendant's agents or servants, left the car at least six blocks away from the station and took the platform at a time when the train was not slowing up for the station, but was moving rapidly, and remained there until his fatal injury was received. The theory that he went so long before the train reached the station to make ready to alight when it should arrive has no support in the proof, and, even if such were the fact, it would not, unless in exceptional circumstances, have justified him in exposing himself to the unnecessary peril.

The rule is well settled that: "Where the railway company has provided a safe and secure place for passengers to ride within its cars, a passenger who voluntarily and unnecessarily takes a position upon the platform of a car while the train is in motion will, in so doing, be chargeable with such contributory negligence as will preclude him from the right to recover for an injury which would not have befallen him had he been in his proper place." 3 Hutch. on Carriers, sec. 1187; 3 Thompson, Com. on Law of Negligence, sec. 2947; Beach on Contributory Negligence, sec. 149.

This court in *St. Louis, I. M. & S. Ry. Co. v. Leftwich*, 117 Fed., 127, 54 C. C. A., 1, observed that: "Platforms and steps of railway cars propelled by steam are dangerous places for passengers to ride. They are not provided for that purpose, and passenger coaches generally carry on their doors, or in other conspicuous places, notices that the rules of railway companies forbid the passengers to occupy these places for the purpose of riding upon the trains. Moreover, it is a general rule of law that a passenger who, without any reasonable cause or excuse, rides on a platform or on the steps of a railway car . . . is guilty of negligence which, if it contributes to an injury that he sustains, will bar his recovery of damages therefor on account of the concurring negligence of the railway company."

In *Hickey v. Boston & Lowell R. R. Co.*, 14 Allen (Mass.), 429, the Supreme Judicial Court of Massachusetts considered what would be "reasonable cause" for a passenger to ride upon a platform, and there said: "If, then, the position upon the platform was taken voluntarily, and without reasonable cause of necessity or propriety, the plaintiff fails to show that her intestate was in the exercise of due care and caution. An eager desire to be first in, to arrive at the front rather than at the rear of the train is certainly not such reasonable cause. Ordinarily no accident occurs to those who rush out of the train or rush into the cars at stations, before the trains fairly come to a stop or after it is in motion again; but it can not now be questioned that those who do so take upon themselves all the risks which attend such a practice."

In *Fletcher v. Boston & M. R. R.* (187 Mass., 463, 73 N. E., 552, 105 Am. St. Rep., 414), a case was under consideration where the plaintiff was injured while standing upon the upper step leading from the platform of a car. The court said:

"Plainly, if he had remained in the car until the train stopped, this danger would have been avoided. But he voluntarily left a place provided for him as a passenger, and where he would have been safe, and exposed himself to the chance of injury, which common experience has shown is incident to standing upon the platform of a moving railroad car. The fact that the station had been announced, and the train was being reduced in speed preparatory to stopping, or that the combination of conditions causing the accident was peculiar, and not ordinarily to be anticipated, does not furnish a sufficient excuse for his conduct." Citing *Manning v. West End Ry.*, 166 Mass., 230, 44 N. E., 135.

We are aware of the frequent practice of travelers to needlessly rush to the door of the car and sometimes out upon the platform before the train comes to a full stop, merely to expedite their departure from the train; but the open platform

when the train is in motion is a dangerous place, and the practice of resorting to it, except for some urgent and good reason, is against the dictates of common prudence and ought not to receive judicial sanction. Ordinarily it is only a fancied necessity which prompts it, and it is a reasonable thing to require the passenger to forego the practice except at his own peril in case of accident. We think the decedent contributed to the terrible misfortune which befell him, and that no recovery can be had by his (personal representatives on account of it. The court below should have so instructed the jury.

**Master and Servant; Res Ipsa Loquitur; Circumstantial Evidence.**

In *Reed v. Norfolk and Western Railway Co.* (162 Fed., 750), the action was for injuries to the plaintiff, a brakeman, caused by a defective brake on a car. The U. S. Circuit Court for the southern district of West Virginia, while holding that the maxim "*res ipsa loquitur*" does not apply in a case between master and servant, declares that this rule does not prevent the establishment of the master's negligence in an action for injuries to a servant by the circumstances surrounding the accident. In disposing of a motion for new trial, the court said on this point:

Considerable time was given in the argument to the discussion of the maxim, *Res ipsa loquitur*, and as to whether this maxim has any application to cases arising between master and servant. In the courts throughout the United States generally the applicability of this doctrine is involved in great doubt and uncertainty, a great part of which is no doubt due to the fact that many decisions are catalogued as coming under this maxim which, strictly speaking, have no occasion to be referred to it, but may be decided with sole reference to the general rule of circumstantial evidence. The United States courts have ruled with unanimity that the maxim, *Res ipsa loquitur*, has no application to cases between master and servant. *Patton v. Texas & P. R. Co.*, 179 U. S., 658, 21 Sup. Ct. 275, 45 L. ed., 361; *Shandrew v. Chicago, St. P., M. & O. R. Co.*, 142 Fed., 320, 73 C. C. A., 430. I have no wish to enunciate in this case a different rule, and I feel bound by that so frequently enunciated, but I feel also certain that in so holding the federal courts never gave expression, or intended so to do, to the view that the general doctrine of circumstantial evidence was to be ignored or limited because the case in which it was to be applied happened to be one between a master and a servant. For a valuable and masterly discussion of the subject of the applicability of the maxim, *Res ipsa loquitur*, as between master and servant, and more particularly of the proper distinction between that rule and the rule as to circumstantial evidence, I refer to the editorial case note to *Fitzgerald v. Southern Railway Co.*, as reported in 6 L. R. A. (N. S.), 337 et seq., and which note, but for its length, I would feel very much like quoting almost in toto, as it so fully and admirably discusses and illustrates this vexed question. Referring to the general confusion that exists as to the position of courts

generally, upon the subject, the learned author of the note says:

"With respect to cases that have held that the accident, in connection with the circumstances attending the same, was sufficient to make a *prima facie* case of negligence, the difficulty arises mainly from the fact that the decisions turn largely upon the circumstances of the particular case; and some of the cases of this kind are hardly to be distinguished from cases which merely apply the general rule that a fact in issue may be established *prima facie* by circumstantial evidence without any direct evidence."

Further on (page 342) the author says: "To restate, in the light of this distinction, the distinctive function of the rule *res ipsa loquitur*: It is by the assumption of the postulate that physical causes such as are shown to have produced the accident do not ordinarily exist in the absence of negligence to permit the jury to infer some antecedent fault of omission or commission on the part of the master from circumstances which merely point to the physical causes of the accident, and which, apart from that postulate, have no tendency, in and of themselves, to point to negligence as the responsible human cause of the accident, and which do not disclose conditions the existence of which may, without reference to any antecedent fault of omission or commission, be found by the jury to constitute negligence. The comparatively limited function of the distinctive rules *res ipsa loquitur* may be expressed in a different way by the statement that cases which deny that the rule ever applies as between master and servant do not prevent the jury from inferring negligence from circumstances, in addition to the mere physical causes of the injury, which indicate some antecedent fault of omission or commission on the part of the master as the responsible human cause of the very accident in question, nor interfere with the submission to the jury of the question whether the existence of certain conditions, in and of itself, constitutes negligence without reference to any antecedent omission or commission on the part of the master."

This language clearly shows that a resort to the maxim, *Res ipsa loquitur*, is not necessary when the circumstances of the case, as shown before the jury by the evidence, do point to the responsible human cause of the accident, and tend to show an antecedent fault, either of omission or commission, on the part of the master. As I have heretofore pointed out, in the case at bar, the evidence, aside from showing the mere physical causes of the injury, showed that the existing condition of the brake stem in its abnormal position was the result of human agency and human negligence on the part of the last user of the brake; that this condition indeed could not have occurred save by human intervention; and that it was, in its nature continuing, at least in relation to the past, inasmuch as it could not have arisen of itself or by the mere movement of the car. In addition to this, the evidence was that this car came into the yard as a part of a train from Roanoke at 3 o'clock a. m., was inspected as a part of that train, and the evidence as to the method of that inspection was before the jury; and that, when plaintiff came to it in the morning, it was still attached to that train. The jury found as a fact that the inspection made that night was not a reasonably careful inspection,

and there was evidence from which a reasonable man might have so found. I am of opinion from these facts that the jury, as reasonable men, were justified in inferring, in the absence of evidence to the contrary by the party in whose charge this car was from the time of its arrival until the time when plaintiff was called upon to use it, that the condition of the brake staff thereon, as it was when he used it, had existed at the time the car was first inspected, and that the defendant was negligent in said inspection, and that such negligence was the proximate cause of the injury to the plaintiff.

#### Commitment of Person Acquitted on Ground of Insanity.

[Case and Comment, August, 1908.]

Much discussion of the commitment of Thaw to an insane asylum is found in the press. Statutes providing for such commitments are quite general in the United States, as well as in England and Canada. But the validity of the statutes has not often been contested. In *re Brown* (29 Wash., 160, 109 Am. St. Rep., 868, 81 Pac., 552, 1 L. R. A. (N. S.), 540), it was held that such a sentence did not deprive the accused of liberty without due process of law, or of other constitutional rights, when he has had a fair trial on the issue of insanity under his plea of not guilty and has failed to prove that the insanity for which he was acquitted has ended. The Washington statute provided in general that on acquittal for insanity the jury should state the cause, and that the court might commit him to prison if it deemed it dangerous to allow him to go at large. It did not appear that there was any express finding by the jury as to the continuance of insanity at the time of trial. On a petition to the Federal court for habeas corpus it was held, in *Brown v. Urquhart* (139 Fed., 849), that the accused was deprived of liberty without due process of law by such commitment. The Supreme Court of the United States, on appeal, reversed the decision granting the writ on the ground that the Federal court should not interfere in that way, but should leave the accused to his remedy by writ of error from the Federal Supreme Court to the State court, and for that reason declined to express any opinion as to the constitutionality of the statute or its application by the State court. In some States the statutes require the jury, in case of such acquittal for insanity, to find also as to the continuance of the insanity at the time of the trial. In other States this question may be tried by another jury or by some other form of proceeding. But most statutes provide that the verdict of acquittal is prima facie evidence of defendant's insanity. The note to *Ex parte Brown* (in 1 L. R. A. (N. S.), 540), reviews such decisions as have been rendered on this phase of the question. And while in two of them, *Underwood v. People* (32 Mich., 1, 20 Am. Rep., 633), and *Re Boyett* (136 N. C., 415, 103 Am. St. Rep., 944, 48 S. E., 789, 67 L. R. A., 972), a commitment to an insane hospital on such acquittal for insanity is held unconstitutional in the absence of a finding as to the continuance of the insanity, there are other cases which have upheld such commitment. The question whether such commitment can be held constitutional is one of extraordinary importance. Proof of insanity when the homicide was committed does

raise a presumption of its continuance. As shown by numerous decisions on the question, collected in a note in 35 L. R. A., 117, this throws the burden of proving such restoration upon a person who has been adjudged insane. But many cases raise a distinction on this point between what they call general or settled insanity as distinguished from a temporary aberration or hallucination. The power of the legislature to declare the existence of a presumption from certain facts proved, even in criminal cases, is also established in a considerable number of cases, as shown by note in 2 L. R. A. (N. S.), 1007. The enactment, therefore, of a statute declaring that proof that homicide was committed by a person while insane should raise a presumption of the continuance of his insanity until he affirmatively proved his restoration to sanity, would, under the doctrine of the authorities above referred to, be constitutional, and would justify the commitment of one acquitted of homicide on the ground of insanity to an insane hospital, subject, of course, to his right to release on affirmatively establishing that he had become insane. This presumption is, by implication, if not in express terms, at the foundation of the statutes which authorize such commitments on acquittal for insanity. If the legislature should expressly enact that proof of homicide under a homicidal mania should constitute such evidence of the danger of allowing the slayer to go at liberty, and such presumption of the present continuance of his insanity or its liability to return, that he must be kept in safe custody until it should be affirmatively established that his sanity had been restored, there would seem to be little ground for the contention that there was a denial of liberty without due process of law. Without stating this in such express terms, the existing statutes authorizing commitments to hospitals on acquittal for insanity are obviously based on the same presumption. The statutes might also provide that, in setting up the defense of insanity in such cases, the defendant should present two issues; first, as to insanity at the time of the homicide, and, second, as to the restoration of sanity, and that the court, on a verdict of acquittal for insanity, should proceed immediately, and, before rendering judgment to try the second issue as to the alleged restoration of sanity. Such a statute would seem constitutional, and it would not differ greatly in effect from the present laws, which allow the person acquitted for insanity to institute another proceeding immediately to establish the fact that he has again become sane. Therefore, while the question may not be free from doubt, there seems to be good ground for contending that, because of the presumption of continued insanity after acquittal therefor, he is not deprived of liberty without due process of law.

Commenting on the foregoing article, the New York Law Journal says:

"There is copied on the first page today an interesting article from Case and Comment for August, 1908, on 'Commitment of Person Acquitted on the Ground of Insanity.' It discusses the constitutionality of provisions for keeping such persons in custody until they have affirmatively proved their restoration to sanity, and we fully

concur in our contemporary's contention that statutes of that class would be valid.

"We took practically the same view in an article in this journal on March 16, 1908, on 'Discharge of Persons Acquitted on the Ground of Insanity,' going, however, a little further than Case and Comment does. On the grounds of 'the power of the legislature to declare the existence of a presumption from certain facts proved,' and 'that proof of homicide committed by a person while insane should raise a presumption of the continuance of his insanity,' we contended that a defendant might be kept under restraint for a reasonable arbitrary period of time for the sake of observation. On this point we remarked:

"We believe that an arbitrary period of confinement in an asylum—say of at least three years—should be prescribed for all such persons. During that term they would be under observation, and some opportunity would be afforded for an intelligent prognosis. If a person has been eccentric or peculiar all his life he should be kept under surveillance sufficiently long to judge of the probability of a recurrence of his murderous impulse. If the insane fit came out of a clear sky to one who had always been normal before, and has been normal since, there is all the more reason for an extended period of inspection, because, as his insanity or alleged insanity is not referable to ordinary rules, it is impossible to theorize about his mental future. The fact that a provision for an inevitable period of confinement would act as a deterrent to homicide, in reliance upon the "unwritten law" and simulated insanity, is incidentally a strong argument in its favor.

"In view of the probability of the recurrence of insanity in the majority of persons once so afflicted, it would seem a legitimate invasion of individual liberty, under the police power, for public safety, to confine a person who has proved himself dangerously insane during a sufficient term for systematic observation and for demonstration of his cure."

#### Options to Purchase Real Estate; Consideration; Tender; Specific Performance.

In *Rude v. Levy*, in the Supreme Court of Colorado (July, 1908, 96 Pac., 560), the following points, among others, were decided (syllabus):

"Courts of equity do not look with favor upon options to purchase, and are not swift to enforce them against vendors, and, while the right to invoke specific performance of an option, so to speak, is recognized, especially where there is a valuable consideration, such relief is not in order until performance, or a sufficient tender of performance, by the vendee; for an option lacks the elements of a binding contract, and, strictly considered, it is inaccurate to speak of specific performance of an option, since it is only when the vendee has made his election and complied, or in good faith attempted to comply, with the terms of an option, and it has ceased to be an option, and has ripened into a mutually binding and mutually enforceable contract, that it becomes enforceable in equity by the vendee.

"While there is a conflict of authority as to whether an actual tender, such as is required in actions at law, is a necessary prerequisite to specific performance in case of an option to pur-

chase realty, based on an actual consideration, or whether a tender in the bill for relief is sufficient, jurisdiction to order specific performance of a mere naked option will not be entertained, even though it is in writing, where the only consideration shown is by the usual recital of \$1 consideration, and where further action of the vendee is required before the option is developed into a contract to buy, and in such case full and proper tender of the purchase price or other consideration, in accordance with the terms of the instrument, is essential to maintenance of such a suit."

#### Evidence of Similar Accidents and of Condition After Accident.

[New York Law Journal.]

In *Chicago Great Western Ry. v. McDonough*, in the United States Circuit Court of Appeals, Eighth Circuit (April, 1908, 161 Fed., 657), it was held that in an action for injury sustained through a boiler explosion, where the gravamen of the charge was that the defendant had negligently failed to exercise reasonable care in maintaining the boiler in a reasonably safe condition, evidence of recurring explosions, not otherwise explained, in the course of its prior use, when the conditions were substantially the same, was admissible as bearing upon its tendency to become impaired by the particular use to which it was subjected, the defendant's knowledge of that tendency and the precautions which, in the exercise of reasonable or ordinary care, should have been taken in inspecting and testing it to determine whether it was in reasonably safe condition; but that such evidence was not admissible for any other purpose.

The jury having been instructed that the evidence was to be considered only for the purposes above named, it was held that no error had been committed in its reception. The court cites and relies upon *Morse v. Minneapolis, etc., Ry.* (30 Minn., 465), in which it is laid down that, while proof of this kind is not competent for the purpose of showing independent acts of negligence, it may be received when it tends to show that the common cause of accidents is a dangerous or unsafe condition, and that in such restricted application the evidence does not make a new issue.

The United States Circuit Court of Appeals shows that the view it takes is rejected by some courts, but upheld by the weight of authority, citing among other favoring cases *Caragher v. Rogers*, 120 N. Y., 526.

A consideration very commonly used by courts in exonerating a defendant from liability for peculiar accidents is that, as the appliances in question had been in use for many years and no similar casualty had occurred, there was nothing to render the defendant reasonably apprehensive of danger. Within limits, this argument is certainly a sound one, and it is even more sound to hold that when accidents have occurred the defendant is reasonably chargeable with anticipation of similar accidents in the future.

In the principal case the Circuit Court of Appeals also held that evidence of the condition, shortly after an accident, of the instrumentality which caused it is admissible as bearing upon its condition at the time of the accident, or just prior thereto, when it appears that there has been no



intervening change. This ruling seems proper, being different from sanctioning proof of repairs made after an accident which may be viewed as a confession of negligence.

Where the physical condition is disrupted or radically changed by the happening of the accident, and the plaintiff or disinterested witnesses can not be presumed to be acquainted with the prior state of affairs, courts should lean towards administering the doctrine *res ipsa loquitur*.

#### Close Negligence Cases.

[New York Law Journal.]

In *Farrier v. Colorado Springs, etc., Ry. Co.* (95 Pac., 249), it appeared that defendant, a street railway company, ran a train of cars consisting of a motor and an open trailer car.

"On the day of the accident the defendant was running from Colorado Springs to Manitau a train of cars consisting of a motor and an open trailer car. The attachment between the two cars was an automatic coupler which allowed a play of about an inch. When the cars were in motion there was a space of about eight inches between the hood or projecting top of the rear end of the motor car and the same part of the front end of the trailer car.

"A man carrying a long-handled hoe got on the car, taking a seat upon the front bench of the trailer. He put the hoe so that it rested upon the floor and the top of the handle rested against the front end or hood of the trailer, projecting several inches above the same.

"In the rocking motion of the cars, caused by the rough tracks, the handle was caught under the hood of the front car and broken, a piece thereof flying backwards through the trailer car, striking and inflicting injuries to plaintiff, a passenger, who sat about the center of the car.

"It appeared that the conductor knew of the position of the hoe, but did not request the owner to place it in any other position. The court held that the question whether the conductor's failure to cause the passenger to place his hoe on the floor or to carry it in some other position was negligence was for the jury."

We have quoted the summary of the case from the August number of *The Green Bag*. An editorial comment in that journal pronounces the decision "an interesting application of the doctrine that a carrier of passengers must take the utmost possible care to a case where the particular result was hardly foreseeable."

We should say that the court went to the extreme of the doctrine in question. The decision, if sustainable at all, must rest upon the extraordinary liability of a common carrier.

In *Studebaker Bros. Mfg. Co. v. Carter*, in the Court of Civil Appeals of Texas (June, 1908, 111 S. W., 1086), it appeared that plaintiff sent his carriage to defendant to be repaired, and the defendant, not having facilities to make the repairs at its own plant, which plaintiff knew, placed the carriage on the street in front of its warehouse, near the curb, and immediately telephoned an expressman to take it to the repair shop, but, when it had been standing in the street about five minutes a runaway team ran against it and injured it. There were some fifty feet of the street clear for the passage of vehicles between the carriage and the other side of the street, and when the carriage was placed in the street it was not

shown that defendant's employees had reason to anticipate any injury to it in the manner it was damaged. It was held that the trial court was not justified in concluding that defendant did not use reasonable care to prevent injury to the carriage.

Here the court reasoned that the question of the defendant's liability depended upon whether or not it should reasonably have been foreseen that by leaving the carriage unguarded in the street it might be injured by a runaway team, deciding that anticipation of such extraordinary means of injury could not be made a basis for recovery.

#### The Epidemic of Violent Crime.

[London Law Journal.]

There is no more critical feature about the life in our great cities than the increase of murder and other violent crime. From the United States and the continent as well as from our own country outrages and atrocities are constantly being reported, and the perpetrators are often undiscovered, so that a real sense of insecurity is spread about. But what is more serious than the escape of many of the criminals unpunished, is that such crimes should be possible to any large extent. Fitzjames Stephen used to say that it was the fear of Hell which in the end kept people from crime, and the fear of Hell seems to be waning. There is a type of desperate half-human ruffian who, emerging from the abyss which exists in every great town, and knowing no respect for God or man, gives free reign to the most vicious desires, and preys upon society. And there is another type of degenerate who, springing from a different class, but having by self-indulgence killed the social and the moral sense, equally puts no restraint upon his lowest impulses, and violates the primal laws of our civilization. Scientific research has shown that both of these types are diseased, and suffer from forms of madness; and the problem before society is how it can best protect itself against these anti-social derangements. One thing at least is clear, that it can not admit any palliation for, or grant any indulgence to, violent crime. The defense of 'the unwritten law,' which criminals and others have endeavored to set up in America, strikes at the roots of our social system. The Greek thinkers who originated the conception of 'the unwritten law,' meant by it that there were certain moral principles which, though not expressly enacted by the State, were equally binding upon the good citizen. The latter-day apologists of crime, by an absurd and nauseating travesty of the Greek idea, mean by it a return to the 'law of the beasts,' from which civilized society has slowly but surely progressed. Their unwritten law is the negation of all law.

**Labor Unions.**—The acts of striking members of a labor union in picketing the premises of their former employers, and in the use of threats, assaults, and other acts of intimidation, for the purpose of preventing others from working for them, are held in *Chicago Typographical Union No. 16 v. Barnes*, 232 Ill., 424, 83 N. E., 940, 14 L. R. A. (N. S.), 1018, not to be justified on the ground that they are done in the course of labor competition for the promotion of the welfare of union laborers.

**Sales; Option to Buy; Acceptance.**

In *Pollock v. Riddick*, in the United States Circuit Court of Appeals, Sixth Circuit (May, 1908), 161 Fed., 280, it was held that under a contract giving an option to purchase timber, to expire on a certain date, and providing that, "if accepted, the above-named parties are to pay for said timber an additional amount of \$2,450 in cash upon the making of a contract for the sale of said timber," the purchasers were required to pay or tender the money before the option expired to entitle them to maintain an action to recover damages for the refusal of the seller to make the sale. The court said in part:

"The material part of the option executed and delivered by Riddick on November 1, 1904, was as follows:

"Received of E. N. Pollock and H. R. Pollock, Memphis, Tennessee, the sum of fifty dollars, in consideration of which amount I have given, granted and sold to them the option and privilege of purchasing all the timber of every description now standing on that portion of my place in Crittenden County, Ark., &c.

"This option is given for thirty days and expires on the first day of December, 1904."

"If accepted, the above-named parties are to pay for said timber an additional amount of \$2,450 in cash, upon the making of a contract for the sale of said timber."

"It is understood and agreed that if this option is accepted, and said timber purchased, the purchasers are to be allowed three years, or until the first day of January, 1908, to remove the said timber, &c.

"It will be observed that this option was not one to enter into a contract for the purchase of the timber, but to purchase the timber. Its terms are clearly defined. It was given for thirty days, and expired on the 1st day of December, 1904. The Pollocks were given the option and privilege of purchasing the timber, but only within the life of the option. And they were given the option to purchase the timber by paying the additional amount of \$2,450 in cash.

"But it is contended that the term defining payment is qualified by the succeeding condition; that it was to be 'in cash' only 'on the making of a contract for the sale of said timber'; that this last, 'the making of a contract for the sale of said timber,' was a condition precedent; that the cash did not have to be paid or tendered until the contract was made; and that in the present case the contract was not made, nor was there any offer to make it. The substituted declaration avers that Riddick was absent from Memphis from and after about the 20th day of November, 1904, until the 5th day of December, 1904, at Somerville, in Fayette county, Tenn., and that prior to the 1st day of December, 1904, one of the Pollocks went to Somerville, saw Riddick, and told him that they (the Pollocks) accepted the option and contract to purchase, and that they would take the timber under the terms and conditions of the option, and that Riddick returned to Memphis on or about the 5th day of December, 1904, and on that day the Pollocks were ready, willing, and able to pay the defendant the sum of \$2,450, the balance of the consideration named in the option and contract and demanded under the option; that Riddick execute a contract for the timber upon said property to them, and that he comply with the

conditions of said option, which Riddick declined to do, on the ground that the balance of the consideration of \$2,450 was not paid or tendered on or before the 1st day of December, 1904, and that the demand for a compliance with the said contract on December 5, 1904, came too late. In brief, as shown by the substituted declaration, the Pollocks were given until the end of the 1st day of December to purchase the timber by paying the additional amount of \$2,450 in cash, and at the time of paying or tendering this money they had a right to demand a conveyance of the timber. But they let the time pass without taking advantage of the option. By the terms of the option it expired on the 1st day of December, and they waited until the 5th of December, and then demanded that Riddick execute a contract conveying them the timber. They made this demand upon the strength of the fact that on or about the 1st of December they had notified Riddick that they accepted the option, but, though they accepted it, they did not comply with its terms during its existence.

"We think this case is fully covered by the decisions in *Kelsey v. Crowther* (162 U. S., 404, 408, 16 Sup. Ct., 808, 40 L. Ed., 1017), and *Kentucky Distilleries & Warehouse Co. v. Warwick Co.* (109 Fed., 280, 283, 48 C. C. A., 363). In each of these cases an option to sell land, etc., was involved and a proceeding to enforce the option. In each an abstract of the land covered by the option was to be furnished, and the failure on the part of the giver of the option to furnish the abstract was made the excuse for not paying or tendering the price of the land within the time fixed by the option. But the court held that the duty to tender the price of the land under the option and according to its terms existed regardless of the failure on the part of the giver of the option to furnish the abstract if the would-be purchaser desired to lay the ground for the suit for specific performance. Said the court, speaking by Mr. Justice Shiras (page 408 of 162 U. S., page 810 of 16 Sup. Ct., 40 L. Ed., 1017):

"If the contract is construed as making it the duty of Crowther to tender the abstract, yet his failure to do so did not dispense with performance or the offer to perform on the part of the complainants. His failure to furnish the abstract might have justified the complainants in declaring themselves off from the contract, and might have formed a successful defense to an action for damages brought by Crowther. But, if they wished to specifically enforce the contract, it was necessary for the complainants themselves to tender performance. To entitle themselves to a decree for a specific performance of a contract to sell land it has always been held necessary that the purchasers should tender the purchase money."

"This is in accordance with the rule laid down in *Bank of Columbia v. Hagner* (1 Pet., 460, 464, 7 L. Ed., 219):

"The seller ought not to be compelled to part with his property without receiving the consideration, nor the purchaser to part with his money without an equivalent in return. Hence in such cases, if either a vendor or vendee wish to compel the other to fulfill his contract, he must make his part of the agreement precedent, and can not proceed against the other without an actual performance of the agreement on his part, or a tender and refusal."

"The same question came before this court in the case of *Kentucky Distilleries & Warehouse Company v. Warwick Co.* (109 Fed., 280, 48 C. C. A., 363), and the decision of the Supreme Court in *Kelsey v. Crowther* was expressly followed, Judge, now Mr. Justice, Day, saying (p. 283 of 109 Fed., p. 366 of 48 C. C. A.):

"As we understand *Kelsey v. Crowther*, the ruling of the Supreme Court of the United States is that notwithstanding failure to furnish an abstract when the purchase money was to be paid by a day certain, and time was of the essence of the contract, the purchaser seeking specific performance would be obliged himself to tender performance on his part."

"In the present case the option was to purchase, and it had to be used within thirty days. It was to expire on the 1st of December. Before the termination of that day the \$2,450 must be paid in cash. If the Pollocks desired the timber they should have paid the cash. If they desired also a written contract they should have paid or tendered the cash on that day and demanded the contract. It does not appear they did either thing. They simply stood by and failed to take advantage of the option while it was still alive."

#### Master and Servant.

The rule that one employing an independent contractor is not liable for the latter's negligence is held, in *Houghton v. Loma Prieta Lumber Co.* (Cal.), 93 Pac., 82, 14 L. R. A. (N. S.), 913, not to be modified by the doctrine that the employer is liable if the work is such as would necessarily produce wrongful consequences, without reference to the negligence of the contractor, or is such as is intrinsically dangerous, and constitutes ipso facto a nuisance, where the injury is produced by blasting in the construction of a wagon road through an uninhabited and substantially untraveled, wild, mountainous region.

A single act of negligence of a helper of a piano mover, in letting a piano fall so as to injure the latter, committed after the hiring, and without the master's knowledge, is held, in *McIntosh v. Jones* (Mont.), 93 Pac., 557, 14 L. R. A. (N. S.), 933, not to charge the master with lack of ordinary care in the selection of such assistant.

Failure of the master to promulgate rules and regulations, or to give instructions tending in any way to protect employees working on a coal wharf from being run over by cars which are set in motion at irregular intervals, or to require signals or the presence of a lookout in front of the cars while moving, such precautions being entirely easy and feasible, is held, in *Polaski v. Pittsburgh Coal Dock Co.* (Wis.), 114 N. W., 437, 14 L. R. A. (N. S.), 952, to make out a prima facie case of negligence and liability for resulting injury to a servant.

The duty of inspection owed by a transportation company to its employees is held, in *Haskell & B. Car Co. v. Przezdziakowski* (Ind.), 83 N. E., 626, 14 L. R. A. (N. S.), 972, not to apply to a manufacturing company operating a railroad for transporting materials about its establishment, in a case where one of its employees is hurt by a car owned by another company and received upon a siding merely to be unloaded.

That a master does not, as a matter of law, comply with his duty to furnish suitable materials for

a scaffold to be erected by his servants for their own use, so as to relieve him from liability for injury to a servant by its fall, is declared in *Hoyeland v. National Blower Works* (Wis.), 114 N. W., 795, 14 L. R. A. (N. S.), 1254, where he directs the selection to be made from piles of rotten second-hand lumber, some of the pieces of which contain auger holes, and forbids the use therefore of new lumber which is at hand.

#### The Scientific American.

The Wright Brothers' aeroplane was first brought to the attention of the world through the columns of the *Scientific American*, and its recent successful flights in France again calls the attention of thinking people everywhere to the almost prophetic value of the editorial indorsement of the publication. The invention of the telegraph, phonograph, telephone and automobile; the discovery of Roentgen rays, wireless telegraph and telephony and every other important scientific or mechanical step in the world's progress made during the nineteenth and twentieth centuries, was first brought to the attention of the public in an interesting and popular manner through the columns of the *Scientific American*. In world-wide influence, prestige, educational and practical value the *Scientific American* stands alone.

**Mechanics' Lien.**—In a suit against the owner of a building to enforce a subcontractor's lien, it is held in *Fossett v. Rock Island Lumber & Mfg. Co.* (Kan.), 92 Pac., 833, 14 L. R. A. (N. S.), 918, that the owner is entitled to credit for payments made other subcontractors during the sixty days within which they were entitled to, but did not, file liens, to the extent of the pro rata amounts which the other subcontractors would have been entitled to if their liens had been filed.

A subcontractor, materialman or workman, between whom and the owner there is no privity of contract, and in whose favor no direct liability has been imposed upon the owner, is held, in *Alberti v. Moore* (Okla.), 93 Pac., 543, 14 L. R. A. (N. S.), 1036, not to be entitled to a personal judgment against the owner.

**Negligence.**—The owners of a building are held, in *Springsfield Electric Light & P. Co. v. Calvert*, 231 Ill., 290, 83 N. E., 184, 14 L. R. A. (N. S.), 782, to be liable for the death of a contractor's servant who while at work removing a stack from the building, and in the exercise of due care for his safety, breaks through the roof and is killed, where the accident is due to a hidden defect of which the owners knew, but failed to warn him.

A hospital which is an adjunct of a medical school and is conducted for profit is held, in *University of Louisville v. Hammock* (Ky.), 106 S. W., 219, 14 L. R. A. (N. S.), 784, not to be a purely public charity, so as to be exempt from liability for the negligence of its servants, although it takes some free patients.

"Wilful negligence," whereby liability is incurred irrespective of the plaintiff's negligence, is held, in *Anderson v. Minneapolis, St. P. & S. Ste. M. R. Co.* (Minn.), 114 N. W., 1123, 14 L. R. A. (N. S.), 886, to be a failure after, and not before, discovering his peril, to exercise ordinary care to prevent the impending injury.

**Notes of Important Decisions.**

**Bankruptcy—Insanity.**—In a proceeding entitled *In re Ward*, in the United States District Court, District New Jersey (April, 1908), 161 Fed., 755, it was held that it was a defense to a petition in involuntary bankruptcy which alleges as an act of bankruptcy that defendant conveyed property with intent to hinder, delay and defraud his creditors, that the alleged bankrupt was insane at the time of such conveyance and incapable of forming such intent.

It was further held that a court of bankruptcy is not deprived of jurisdiction in an involuntary proceeding by an adjudication in a State court in proceedings instituted after the filing of the petition, that the alleged bankrupt is insane and has been insane since a time prior to the alleged act of bankruptcy set out in the petition, nor is such adjudication conclusive on the bankruptcy court; but the issue of insanity may be tried under the defense that the defendant did not commit the alleged act of bankruptcy.

It was also decided that the proceedings on the trial to a jury of the issues joined on a petition in involuntary bankruptcy are the same in form as in the trial of an action at law, and the court is without authority to require the alleged bankrupt to submit himself to an examination as to his sanity before trial.

**Contempt—Abatement—Death.**—In *Wasserman v. United States*, in the United States Circuit Court of Appeals, Eighth Circuit (May, 1908), 161 Fed., 722, it appeared that the defendant in a suit in equity was adjudged to pay a fine, and to be committed until he paid it, for contempt of court in violating a preliminary injunction. He sued out a writ of error and died before a hearing. It was held that the proceedings for the contempt were civil, and not criminal, and did not abate by his death. The court said in part:

"The judgment challenged by the writ of error in this case is in reality an interlocutory order in a suit in equity. The petition for an attachment which instituted the proceeding for contempt was entitled in the equity suit, and was made by the complainant therein. The order to show cause, the return of the defendant thereto, the judgment for fine and imprisonment, the assignment of errors and the petition for the writ of error are all entitled in the equity suit. The offense on account of which the fine was imposed consisted in the doing by the deceased of an act which the court below, for the benefit of the complainant, had ordered him not to do, and the judgment for the fine and for the imprisonment, until it was paid, was in the nature of an execution to compel him to comply with the original order to refrain from selling the tickets there described.

"Even if the adjudication had been made in a criminal case, the court below could have issued an execution and have levied it upon the property of the defendant for the purpose of collecting the fine (Rev. St., sec. 1041, U. S. Comp. St., 1901, p. 724). But the proceeding in this case was clearly civil and not criminal, and the judgment for the punishment a mere interlocutory order in a suit in equity (*Worden v. Searls*, 121 U. S., 14, 25, 7 Sup. Ct., 814, 30 L. Ed., 853; *Heinze v. Butte & B. Consol. Min. Co.*, 129 Fed., 274, 63 C. C. A., 388, 389, 401), and the court below still retained jurisdiction to enforce the collection of the fine by

execution or other process or order. The suit in equity in which this order was made was not an action for injury to the person, but for injury actual and threatened to the property and business of the complainant, and it did not abate with the death of the defendant Wasserman. The interlocutory order in that suit for the payment of the fine and the commitment of the defendant who has died was collectible out of his estate and property, both before and after his death, and his representatives after his decease were therefore interested in prosecuting the writ of error and reversing the judgment if possible. Even if this had been a criminal proceeding, the executors and administrators of the estate would have been liable to its extent to the payment of this fine (Rev. St., sec. 3468, U. S. Comp. St., 1901, p. 2314, 3 Williams on Executors, 7th ed., 240). Inasmuch as the liability of the estate and property of Wasserman to the payment of this judgment continued after that property passed to the hands of his executors or administrators, and inasmuch as that judgment was rendered in a civil and not in a criminal proceeding for a contempt of court, the cause of action survived and the representatives of the estate of the deceased are entitled to prosecute the writ of error in this court to the same extent as was the deceased. Neither the writ of error nor the proceedings for the contempt were abated by the death of Wasserman."

**Carriers.**—Delivery of a carrier's baggage check for a trunk which is at a union station, to the agent of another company at a way station on its line, who agrees to procure and forward it, is held, in *Southern R. Co. v. Bickley, M. & Co.* (Tenn.), 107 S. W., 680, 14 L. R. A. (N. S.), 859, not to be a constructive delivery of the trunk to the second carrier so as to make it liable for the subsequent loss of the baggage while still in the union station, there being nothing to show that the agent had authority to make the agreement.

A sleeping car company, although not a common carrier, is held, in *Pullman v. Lutz* (Ala.), 45 So., 675, 14 L. R. A. (N. S.), 907, to be under an obligation to notify a passenger of her arrival at her destination.

A carrier volunteering to assist a woman to board a train at a station where no unusual difficulties are present, is held, in *St. Louis, I. M. & S. R. Co. v. Green*, 85 Ark., 117, 107 S. W., 168, 14 L. R. A. (N. S.), 1148, to be bound to use only ordinary care in the discharge of that service.

The duty of reasonable inspection imposed upon a carrier receiving cars from another line is held, in *Gulf, W. T. & P. R. Co. v. Wittnebert* (Tex.), 108 S. W., 150, 14 L. R. A. (N. S.), 1227, not to require it to unscrew the cap on the dome of an oil car to discover whether a concealed check valve was properly set in loading the car, so as to protect from injury persons in the employ of the consignee who might unload it.

**Guaranty.**—A guaranty to a firm of a customer's running account is held, in *Lyon v. Plum* (N. J.), 69 Atl., 209, 14 L. R. A. (N. S.), 1231, not to be operative as to credit extended after the admission into such a firm of a new member, in the absence of anything to show that such change in the firm was originally contemplated by the guarantor.

**Homicide.**—The killing of a boy by his father is held, in *State v. Speyer*, 207 Mo., 540, 106 S. W., 505, 14 L. R. A. (N. S.), 836, not to be deliberate within the rule that a killing must be with premeditation and deliberation to constitute murder in the first degree, when the father, under apprehension of immediate separation from the child, and the fear that it may be disgraced and mistreated, finding it asleep, is struck with the thought of killing it, which he instantly executes, no malignity existing in his heart toward the child at the time, and the deed not being prompted by motives of revenge.

That a physician may be charged with manslaughter by causing the death of a sick child by advising a diet which results in its starvation, under a statute which treats all persons concerned in the commission of an offense as principals, although it was the mother of the child who actually withheld the food from it, in the absence of the accused, is declared in *State v. McFadden* (Wash.), 93 Pac., 414, 14 L. R. A. (N. S.), 1140.

**Husband and Wife.**—The right of a creditor who furnishes the necessities of life to a wife, to maintain an action against the husband for them, is sustained in *Edminston v. Smith*, 13 Idaho, 645, 92 Pac., 842, 14 L. R. A. (N. S.), 871, although the husband did not contract the debt nor promise to pay the bill.

That a husband is not relieved from liability for the torts of the wife by the married woman's laws is declared in *Kellar v. James* (W. Va.), 59 S. E., 939, 14 L. R. A. (N. S.), 1003.

But in *Schuler v. Henry* (Colo.), 94 Pac., 360, 14 L. R. A. (N. S.), 1009, it is held that a law which makes a husband liable for the torts of his wife committed during coverture, out of his presence, and in which he in no manner participates, is repealed by implication by statutes which give to a married woman absolute control and dominion over her property and person.

**Evidence—Dangerous Character.**—To render admissible evidence of specific instances to show the dangerous character of one upon whom an assault is alleged to have been committed in self-defense, it is held, in *McQuiggan v. Ladd* (79 Vt., 90, 64 Atl., 503, 14 L. R. A. (N. S.), 689), that defendant need not be shown to have known of all their details, if he knew that such character existed.

But the right of one accused of murder to prove, for the purpose of showing reasonable ground for apprehension of bodily injury or loss of his life, particular instances of violence or viciousness on the part of the deceased, which did not concern the defendant, and at which the latter was not present, and of which he had no personal knowledge, is denied in *State v. Roderick*, 77 Ohio St., 301, 82 N. E., 1082, 14 L. R. A. (N. S.), 704. With these cases is an elaborate note on the question of the admissibility of evidence of specific instances to prove character.

**False Pretenses.**—When one makes a representation of value as an existing fact, knowing it to be false, and intending it to influence another to part with money or property, and the other party, relying upon such representation, is thereby induced to part with money or property to the one making the false representation of value, such facts are held, in *Williams v. State*, 77 Ohio St. 468, 83 N. E., 802, 14 L. R. A. (N. S.), 1197, to be sufficient to sustain a conviction for obtaining money or property by false pretense.

## GEORGETOWN UNIVERSITY SCHOOL OF LAW.

FOUNDED 1789.

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(United States Attorney for the District of Columbia),  
On General Practice and Exercises in Pleading and  
Evidence.

FREDERICK VAN DYNE  
(Late Assistant Solicitor, Department of State),  
On Citizenship.

The thirty-eighth annual session opens Wednesday, September 30, 1908, at 6.30 p. m., in the Law School Building, 578 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

TUITION.....\$100.00

The Secretary will be at his office in the Law Building daily for information, enrolment, payment of fees, etc. Students proposing to connect themselves with the school are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1223 F street northwest, or upon application to the undersigned.

R. J. WATKINS,  
Secretary.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Brandenburg & Brandenburg, Solicitors

In the Supreme Court of the District of Columbia.  
The Edes Home, a Corporation, v. Basil Waters et al.  
No 27,622, Eq.

The object of this suit is to quiet title and establish of record by adverse possession a good title in fee simple in the complainant to the north part of the lot of ground known as lot 221, in Beatty & Hawkins' addition to that part of the District of Columbia formerly known as Georgetown, and described as being the fifty-nine feet six inches on the west side of Market street and running back the full depth of said lot, more particularly described in the bill of complaint, and restrain and enjoin the defendants from setting up, claiming, or asserting any title thereto. On motion of the complainant, by its solicitors, Brandenburg & Brandenburg, it is this 23d day of September, A. D. 1908, ordered that the defendants, Basil Waters, Ignatius Waters, Zedock Waters, Mary A. Waters, Mary E. Waters, Lottie Waters, Hood Waters, Virginia Waters, Eliza Waters, William Waters, Susan Gibson and her husband, — Gibson; Agnes Gibson, Anna Dorsey and her husband, — Dorsey; Fannie Pennington and her husband, — Pennington; Agnes Gibson, James Gibson, Nannie Kimmel, Agnes Dorsey and her husband, Harry Dorsey; Sarah Dorsey, William A. Waters, Zechariah D. Waters, Washington Waters, Washington D. Waters, B. Worthington Waters, Thomas W. Waters, Ignatius Waters, I. Sollers Waters, Fannie W. Lerner, if they be living, or, if any or all of them be dead, then the unknown heirs, alienors, or devisees of any or all of them, cause their appearance to be entered herein on or before the first ruleday occurring three months after the date of the expiration of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three consecutive months in The Washington Law Reporter and The Evening Star before said date. By the

[Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.  
sept. 26; oct. 2, 30; nov. 6, 27; dec. 4.

### Legal Notices.

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John R. Garrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of September, 1908. JENNIE GARRISON, FIELDING H. GARRISON, 1437 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 16,500. Administration. [Seal.] 39-31

Geo. Francis Williams, Attorney  
In the Supreme Court of the District of Columbia.

Lulu Tiffin v. Alice C. Burr et al.  
No. 27,612. In Equity.

George Francis Williams, trustee, having reported that he has sold at private sale, subject to the confirmation of the court, as heretofore authorized, lot 34 and the north 5 feet front by depth of lot 85 in King's subdivision of Long Meadows, in this District, unto Henry F. Houck for two hundred and twenty-five dollars, it is, this 26th day of September, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 26th day of October, 1908. Provided this order be published once a week for three successive weeks before that day in The Washington Law Reporter.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-31

G. F. Williams, Solicitor

In the Supreme Court of the District of Columbia.

Lulu Tiffin v. Alice C. Burr et al.  
No. 27,612. In Equity.

George Francis Williams, trustee in the above entitled cause, having reported that he has made the following sales at public auction, namely, part of lot 19 in Rothwell and Naylor's subdivision of square 425, in the city of Washington, with improvements, unto Charles T. Burns for \$4,100.00; premises 1242 Bladensburg Road, being parts of lots 28 and 29 in King's subdivision of Long Meadows, in the county of Washington, District of Columbia, unto Henry F. Houck for \$650; premises 1244 Bladensburg Road, being part of lot 29 in said King's subdivision of Long Meadows, unto said Henry F. Houck for \$650; premises 1246 Bladensburg Road, being parts of lots 29 and 30 of said King's subdivision of Long Meadows, unto John Bello for \$805, it is this 22d day of September, 1908, ordered, that all of said sales be confirmed by the court, unless cause to the contrary be shown on or before the 22d day of October, 1908. Provided this order be published once a week for three successive weeks before said last mentioned

[Seal] day in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-31

Crandal Mackey, Solicitor

In the Supreme Court of the District of Columbia.  
Charles W. Jarrell, Complainant, v. Sadie E. Jarrell,  
Defendant. Equity, No. 27,994.

#### ORDER OF PUBLICATION.

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. On motion of the complainant, it is, this 22d day of September, A. D. 1908, ordered that the defendant, Sadie E. Jarrell, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The

[Seal] Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-31

Justice blanks of every description for sale at this office.



**Legal Notices.**

**Edward S. Bailey, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Adella L. S. Thoms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of September, 1908. CHARLES H. HORTON, 13 4 Mass. ave.; BENJAMIN G. POOL, 945 R. I. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,810. Administration. [Seal.] 39-3t

**Richard A. Ford, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alexander J. Bentley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. ALEXANDER GARNER BENTLEY, Union Trust Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,442. Admn. [Seal.] 39-3t

**George E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles K. Stellwagen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. EDWARD J. STELLWAGEN, Union Trust Co. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,512. Administration. [Seal.] 39-3t

**Raleigh Sherman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Wroe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. RALEIGH SHERMAN, 1410 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,113. Administration. [Seal.] 39-3t

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Clarke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of September, 1908. MICHAEL F. CLARKE, 1100 21st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,502. Administration. [Seal.] 39-3t

**Legal Notices.**

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Helen V. E. Strecker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. FREDERICK W. BERGMAN, Sultland, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,492. Administration. [Seal.] 39-3t

**Henry C. Stewart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Frank P. Burke, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 23d day of September, 1908. JAMES M. GREEN, PATRICK J. WALSH, by Henry C. Stewart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,772. Administration. [Seal.] 39-3t

**SECOND INSERTION.**

**George C. Shinn, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of September, 1908. FRANK C. STRATTON, 1013 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,491. Administration. [Seal.] 39-3t

**D. W. Baker, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court.**  
**No. 780.**

In the matter of the condemnation of squares two hundred and twenty-six (226), two hundred and twenty-seven (227), two hundred and twenty-eight (228), two hundred and twenty-nine (229), and two hundred and thirty (230), in the city of Washington, in the District of Columbia, for use and accommodation of the United States Departments of State, Justice, and Commerce and Labor, it is ordered, this 16th day of September, A. D. 1908, that the order of publication heretofore issued and published in The Washington Star and The Washington Post and The Washington Law Reporter be amended by adding the following names: Henrietta Harvey Dyer, Margaret R. Long, Florence Dyer Berry, Daisy Dyer Howard, and Andrew J. Miller, and that said publication be continued as heretofore ordered. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 39-4t

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**Legal Notices.**

Thomas P. Woodward and W. Mosby Williams,  
Solicitors

In the Supreme Court of the District of Columbia.  
John Kennedy, Complainant, v. Kunigunda Heisler  
et al. Equity, No. 27,980.

The object of this suit is to establish that John Heisler and Kunigunda Heisler, his wife, signed the deed recorded in liber J. A. S. 22, folio 468, and to declare complainant's title perfect by adverse possession to the north 14 feet front on 7th street by the full depth that width of original lot 7 in square 437, situate in the city of Washington, in the District of Columbia, as more fully set forth in the bill. On motion of the complainant, it is, this 14th day of September, 1908, ordered that the defendant, Kunigunda Heisler, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of John Heisler, deceased, of Kunigunda Heisler, deceased, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after six weeks from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for the first four weeks prior to said rule day in The Washington Law

Reporter, for good cause shown a longer period of publication being dispensed with.  
[Seal] ASHLEY M. GOULD, Justice. A true copy.  
Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 38-4t

W. J. Lambert, Solicitor

In the Supreme Court of the District of Columbia.  
Helen Von der Tann v. John B. Lybrook.  
No. 28,002, Equity Doc. —.

The object of this suit is to appoint a trustee or trustees with full power and authority to execute the trusts of the deed of trust, dated May 20th, 1905, and recorded in liber No. 2011, at folio 872 et seq., one of the land records of the District of Columbia, the trustees named in said deed of trust having died. On motion of the complainant, it is, this 15th day of September, 1908, ordered that the defendant, John B. Lybrook, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Post before said day. ASHLEY M. GOULD, Justice. 38-3t

Jos. A. Burkart, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Marie F. Seltz, Deceased.  
No. 15,331. Administration Docket 38.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jos. A. Burkart, it is ordered, this 14th day of September, A. D. 1908, that Ida Seltz, and all others concerned, appear in said court on Tuesday, the 20th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 38-3t

C. C. Calhoun, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sylvanus E. Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1908. BERTHA B. JOHNSON, 1380 Vermont ave., PHILANDER C. JOHNSON, care of The Evening Star. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,431. Admn. [Seal.] 38-3t

**Legal Notices.**

Robinson White, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John A. McDonald, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of September, 1908. GEORGIANNA McDONALD, 3327 Brightwood ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,372. Admn. [Seal.] 38-3t

Arthur Peter, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George Bobinger, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1908. LOUISE MARGRETT BOBINGER, Cabin John Hotel, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,180. Administration. [Seal.] 38-3t

R. Ross Perry, Jr., Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Jane Perry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of September, 1908. R. ROSS PERRY, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,451. Admn. [Seal.] 38-3t

**THIRD INSERTION.**

Eugene A. Jones, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William E. Herbert, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. MONTREY T. HERBERT, 1121 6th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,467. Administration. [Seal.] 37-3t

Sheehy & Sheehy, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Nugent, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. REV. P. J. O'CONNELL, 1201 S. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,322. Administration. [Seal.] 37-3t

**Legal Notices.**

C. W. Darr and Hayden Johnson, Solicitors  
In the Supreme Court of the District of Columbia.  
William T. Harvey, Complainant, v. Hugh T. Harvey  
et al., Defendants. Equity No. 26,482.

Upon consideration of the petition and report of Charles W. Darr and Hayden Johnson, trustees, and the accompanying papers filed herein on the 10th day of September, A. D. 1908, that they have sold to Harry E. Gladmon for the purchase of houses No. 2223 I street N. W., and 2226 I street Northwest, the first of said properties being known as part of original lot numbered nine (9) in square fifty-five (55), containing within the following metes and bounds, viz: beginning for the same at a point on I street distant thirty (30) feet ten (10) inches east from the northwest corner of said lot and square, and running thence east twelve (12) feet; thence south seventy-five (75) feet, and thence west twelve (12) feet, and thence north seventy-five (75) feet to the place of beginning. Subject as to said part of lot nine (9) to a right of way over the rear eight (8) feet of said lot, for the use of the part of said lot nine (9) adjoining on the east, improved by a two-story frame dwelling, No. 2223 I street Northwest, for the sum of \$1,500, and for house No. 2226 I street N. W., known as part of original lot numbered nine (9) in square numbered fifty-five (55), containing within the following metes and bounds, viz: beginning for the same at the northwest corner of said lot and running thence east eighteen (18) feet ten (10) inches with the line of I street; thence south sixty-seven (67) feet to a private alley eight (8) feet wide, to be left open for the use of said lot, to 23d street across the south part of said lot; thence west eighteen (18) feet ten (10) inches to 23d street; thence north on said street sixty-seven (67) feet to the place of beginning, improved by a two-story frame dwelling, No. 2226 I street northwest, for the sum of \$2,000, it is, this 10th day of September, A. D. 1908, by the court, ordered, adjudged, and decreed that said sales be, and the same are hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 13th day of October, A. D. 1908. Provided a copy of this order be published in The Washington Law Reporter and The Washington Herald once a week for three successive weeks before said last named day. By the Court: ASHLEY M. GOULD, Justice. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 37-31

[Seal] Darr, Peyser & Taylor, Attorneys  
In the Supreme Court of the District of Columbia.  
Jane Collins v. John Craven et al.  
No. 37,978, Equity Doc. —.

The object of this suit is to partition by sale the estate of Michael Craven, deceased, and to distribute the proceeds to heirs at law and parties entitled thereto. On motion of the complainant, it is this 10th day of September, 1908, ordered that the defendant, William Craven, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening Star before said day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 37-31

[Seal] Wilson & Barksdale, Solicitors  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Mary Elizabeth Thompson et al. v. Virgil Thompson et al. Equity No. 27,728.

Andrew Wilson and Clarence E. King, trustees, having reported an offer from S. Oppenheimer of eighteen hundred dollars, cash, for the real estate decreed to be sold in this cause, it is, this 9th day of September, 1908, ordered that said trustees be, and they are hereby, authorized and directed to accept said offer and that the sale of said property will be ratified and confirmed on the 9th day of October, 1908, unless cause to the contrary be shown before said last mentioned day. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald prior to the last mentioned day. ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 37-31

[Seal] Justice blanks of every description for sale at this office.

Justice blanks of every description for sale at this office.

**Legal Notices.**

Kappler & Merillat, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anna Dean Biggs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of September, 1908. WILLIAM H. SARDO, No. 468 H St. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,486. Administration. [Seal.] 37-31

McNeill & McNeill, Attorneys  
In the Supreme Court of the District of Columbia.  
N. M. Matthews & Company, Plaintiff, v. George T. Underwood, Defendant, and Alton P. White, Garnishee. At Law, No. 50,748.

ORDER OF PUBLICATION.  
The object of this suit is to recover the sum of three hundred thirty-three and twelve one-hundredths dollars (\$333.12) with interest and costs, and to have a judgment for condemnation of certain property and credits of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 11th day of September, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and The Washington Evening Star before said day. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 37-31

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Henry J. Mastbrook, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 11th day of September, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Kiechelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,479. Administration. [Seal.] 37-31

**FOURTH INSERTION.**

M. J. Colbert and H. W. Sohn, Solicitors  
In the Supreme Court of the District of Columbia.  
Mary A. Horrigan et al. v. The Unknown Heirs, etc., of John Peltz et al. Equity No. 37,941.

The object of this suit is to declare complainants title to be good in fee simple by adverse possession to the following described land and premises in the city of Washington, District of Columbia, to-wit: The east 17.83 feet front by the full depth of original lot three, in square five hundred and fifty-eight, and to perpetually enjoin the defendants from asserting any title to said real estate. On motion of the complainants, it is this 19th day of August, 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of John Peltz, Alexander M. Peltz, and Michael B. Peltz, and the unknown heirs, alienees, and devisees of John Davis and Charles Glover, executors of John Peltz, cause their appearance to be entered herein on or before the first rule day, occurring after the expiration of two months from this date; otherwise the cause will be proceeded with as in case of default. The court is satisfied upon good cause shown, as appears by the affidavit filed herein, that it is not necessary that this order should be published at least twice a month for a period not less than three months. This order shall be published twice a month for two months in The Washington Law Reporter, the court not deeming it necessary for the same to be published in any other paper, and no other paper having been selected by the parties.

[Seal] WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug 21-23, sept 13-25

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - OCTOBER 2, 1908

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### Our District Courts.

The Court of Appeals of this District will convene for the October term on Tuesday, October 6, 1908. The calendar for the term is printed in this issue, and contains 128 cases, of which 52 are on the general calendar, 30 on the special calendar, and 46 on the calendar of appeals in patent causes. This is an increase of 22 over the number on the calendar at the beginning of the October, 1907, term. A fact of interest to be noted is the increasing volume of business of the Court of Appeals. During the year just closing, covering the period from October 1, 1907, to date, an aggregate of 195 cases, were finally disposed of, written opinions being filed in 181 of these cases. This was largely in excess of the number of cases disposed of during any previous year in the history of the court—and this despite the fact that for some weeks vacancies on the bench prevented the hearing and disposition of cases. The number of cases at present on the calendar indicates that during the year now beginning a new record will be made.

The several branches of the Supreme Court of the District will also convene for the October term on Tuesday, October 6, 1908. The assignment of the justices to the several courts will be as follows: Circuit Court No. 1, Mr. Justice Stafford; Circuit

Court No. 2, Mr. Justice Gould; Equity Court No. 1, Mr. Justice Barnard; Equity Court No. 2, Mr. Justice Wright; Criminal Court No. 1, Mr. Chief Justice Clabaugh; Criminal Court No. 2, Mr. Justice Anderson.

The civil calendars of the court are unusually heavy, and contain a total of 838 cases, an increase of 157 as compared with the number on the calendar for the October term, 1907. On the equity calendar there are 87 cases, an increase of 35; and on the law calendars there are 751 cases, of which 620 are on the trial calendar, an increase of 86, and 131 are appeals from justices of the peace, an increase of 36. The criminal calendar contains a large number of cases, many of them being of exceptional interest. The law calendar for the term has been printed, and may be had by applying at the clerk's office.

### Georgetown University School of Law.

The opening exercises of the thirty-eighth annual session of the Georgetown University School of Law were held on Wednesday evening, September 30th, and were largely attended. Chief Justice Clabaugh, of the Supreme Court of the District, dean of the faculty, presided, and brief addresses were made by Rev. Joseph Himmel, S. J., president of the University, and Chief Justice Shepard, of the Court of Appeals of this District. Father Himmel urged upon the students not to neglect their general reading, and Judge Shepard emphasized the importance of a thorough knowledge of the principles of the law, declaring that upon these fundamental principles every decision of the courts is based.

The enrolment for the session is the largest in the history of the school, being in excess of 450, of whom 140 are members of the first year class. Chief Justice Clabaugh, while expressing the appreciation of the faculty at this splendid showing, stated that the school was not out for numbers but for scholarship. This purpose on the part of the management of the school has made its degrees difficult to obtain, but when conferred certificates of thorough training in the law.

### Washington College of Law.

The thirteenth annual session of the Washington College of Law began on Wednesday evening, September 30th. Mrs. Ellen Spencer Mussey, dean of the faculty, made a brief address on "The law as it is viewed by the political parties of the day," and addresses were also made by other members of the faculty. Year by year this school is attracting an increasing number of students of both sexes, and the enrolment for the session now

beginning is the largest in the history of the school. It offers a three years' course leading to the degree of bachelor of laws, and a graduate course upon the successful completion of which the degree of master of laws is conferred.

#### National University Law School.

The National University Law School began its fortieth annual session on Thursday evening, October 1, 1908, with an increased enrolment. Addresses were made by Hon. Eugene Carusi, the venerable chancellor of the University, who is now entering upon his thirtieth year as a member of the faculty, Prof. Charles F. Carusi, Hon. Hannis Taylor and others. The school is now one of the largest and oldest law schools in the country, its graduates numbering nearly 3,000, many of them having attained distinction in the practice of the law, and not a few of them filling important positions on the bench.

#### Contracts with United States; Action by Materialmen on Bond of Contractor.

The case of *United States to use of Watson-Flagg Engineering Co. v. Winkler*, decided by the United States Circuit Court for the Southern District of New York (162 Fed., 397), was an action by a materialman on the bond of a contractor with the United States. The act of February 24, 1905 (33 Stat., 811), amending the act of August 13, 1894 (28 Stat., 278), provides that a contractor with the United States for any public work shall give a bond in usual form with the additional obligation that the contractor shall pay all persons supplying labor or material for the work; that, in case of suit thereon by the United States, any creditor having a claim for labor or materials may intervene therein and have his claim adjudicated and paid, "subject, however, to the priority of the claim and judgment of the United States;" that, in case no suit is brought by the United States within six months from the completion and final settlement of the contract, any such creditor may bring suit on the bond in the name of the United States for the benefit of himself and all other similar creditors, provided that such suit "shall not be commenced until after the complete performance of said contract and final settlement thereof and shall be commenced within one year after the performance and final settlement of said contract and not later." A contractor who had given such bond, and whose contract contained the usual provision giving the United States in case of his default the right to have the contract completed at his cost, became insolvent and abandoned the work. It was held that such abandonment was not a "complete performance

of said contract" which gave a right of action to creditors for labor and materials on the bond under the statute, which contemplates a completion of the work, whether by the contractor or the United States, and a final settlement to determine the prior rights and claim of the United States under the contract and the lapse of six months thereafter for the bringing of suit to enforce such rights against the bondsmen before an action can be maintained by such creditors. The court said:

This action is brought in the name of the United States for the use and benefit of the Watson-Flagg Engineering Company under act of Congress Aug. 13, 1894, c. 280, 28 Stat., 278 (U. S. Comp. St., 1901, p. 2523), as amended by act Feb. 24, 1905, c. 778, 33 Stat., 811 (U. S. Comp. St. Supp., 1907, p. 709).

The Watson-Flagg Engineering Company is a foreign corporation. The Church Construction Company was and is a domestic corporation organized under the laws of the State of New York, and Cornelius L. Winkler is the receiver of said corporation duly appointed by the Supreme Court of the State of New York. The Metropolitan Surety Company is a corporation of the State of New York. August 26, 1905, the United States by its representative entered into a contract with the Church Construction Company by which said company was to furnish labor and materials for the construction of certain barracks at West Point, N. Y. The contract is annexed to the complaint. August 26, 1905, the Church Construction Company as principal and the Metropolitan Surety Company as a surety filed their bond in due form and pursuant to the statute quoted conditioned as follows:

"Now, therefore, if the above-bounden Church Construction Company, shall and will, in all respects, duly and fully observe and perform all and singular the covenants, conditions and agreements in and by the said contract agreed and covenanted by said Church Construction Company to be observed and performed according to the true intent and meaning of the said contract, and as well during any period of extension of said contract that may be granted on the part of the United States as during the original term of the same, and shall promptly make full payments to all persons supplying it labor or materials in the prosecution of the work provided for in said contract, then the above obligation shall be void and of no effect; otherwise, to remain in full force and virtue."

The bond recited the contract generally and runs to the United States of America. It is unnecessary to recite it more fully in discussing this case. Between April 16, 1906, and March 29, 1907, the Watson-Flagg Engineering Company, at the request of the Church Construction Company, supplied it with labor and materials in the prosecution of the work under said contract worth and of the value of \$3,740.98, of which \$1,715 was paid leaving now due and unpaid \$2,025.98. The defendants on demand have neglected and refused to pay said amount, and the complaint charges that by reason of their refusal to pay said amount or certain installments thereof as they became due they breached said contract upon their part "and prevented complete performance thereof on

the part of said Watson-Flagg Engineering Company." The complaint also alleges that the Church Construction Company became insolvent and unable to pay its debts March 29, 1907, and has ever since remained so, and that, by reason of said insolvency, it failed and neglected to pay the installments which were due and payable and breached its contract with the Watson-Flagg Engineering Company and prevented complete performance thereof by said company. The complaint also alleges that the Watson-Flagg Engineering Company fully performed on its part and became entitled to payment.

The bill of complaint then alleges that March 29, 1907, the Church Construction Company abandoned the work and the contract between it and the United States, and thus rendered complete and final performance impossible, and "that no suit has ever been brought by the United States upon the said bond and obligation, though more than six months have elapsed since the abandonment of said contract as aforesaid; that the Watson-Flagg Engineering Company has duly made application to the proper department of the United States for a certified copy of the contract and bond aforesaid, copies of which are annexed as exhibits to this complaint and made a part hereof, and has duly received the same pursuant to said application before the commencement of this action; that the foregoing allegations in this paragraph contained are made in pursuance of the statutes of the United States in such cases made and provided, particularly act Feb. 24, 1905, c. 778, 33 Stat., 811 (U. S. Comp. St. Supp., 1907, p. 709)." The statute provides: (1) That a person entering into a contract with the United States for the prosecution and completion of any public work shall execute the bond specified. Such is this case. Also (2) that when the United States brings suit any person, corporation, or individual who has furnished labor or materials used in the construction of any such public work, payment for which has not been made, shall (a) have the right to intervene and be made a party to any action instituted by the United States on such bond, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claim and judgment of the United States. The United States has not brought any action on the bond of the contractor, and hence there is no intervention or right in plaintiff under this clause of the statute. If, when the United States brings action and others intervene, the full amount of the liability of the surety on the bond is insufficient to pay the full amount of such claims and demands, including that of the United States, then, after paying the full amount due the United States, the remainder of the recovery is to be distributed pro rata among the interveners. This statute then provides:

"If no suit should be brought by the United States within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the department under the direction of which said work has been prosecuted that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall

have a right of action, and shall be, and are hereby authorized to bring suit in the name of the United States in the Circuit Court of the United States in the district in which said contract was to be performed or executed . . . for his or their use and benefit, against said contractor and his sureties, and to prosecute the same to final judgment and execution: Provided, that where suit is instituted by any of such creditors on the bond of the contractor it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract and not later," etc.

It is clear that certain events must happen, certain things be done, before a right of action arises on such bond against the surety in favor of a person supplying labor and materials to the contractor in case the United States does not bring suit. What are they? First. The United States has six months from and after "the completion and final settlement of said contract" in which to bring suit on such bond. If the six months elapse after such "completion and final settlement of said contract," and the United States has not sued thereon, then such person who has supplied material for which payment has not been made may sue in the form provided. The later proviso is also explicit that, "when suit is instituted by any of such creditors on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof." In short, the statute is explicit that, before any such creditor can bring suit on the bond, there must be (1) "a complete performance of said contract;" and (2) "final settlement thereof." It will be noted that the statute does not say "complete performance of said contract by the contractor." If the statute read in that way, such creditors furnishing material to the contractor would be without remedy on the bond, unless the statute is permissive merely and not restrictive of his right to sue thereon, in all cases where the contractor shall or shall have failed to fully complete the contract. Turning to the contract itself, we find this article contained therein:

"Art. 5. That in case of failure of the said party of the second part to comply with the stipulations of this contract according to the true intent and meaning thereof, then the party of the first part shall have the power to execute the contract in open market, charging to the party of the second part any excess in cost over and above the price stipulated herein."

The statute quoted seems to contemplate that in all cases the United States having entered on the work and made a contract for its execution will see that the work is completed; that, when the United States is compelled to complete the work by reason of the failure of the contractor for any reason so to do, this is "the complete performance of said contract." It also seems to contemplate that, when the work is completed by the United States, the cost of doing the work will be ascertained, the amount paid the contractor ascertained, etc., and the amount of damages sustained by the United States ascertained, whereupon the United States may or may not sue the surety on the bond. The statute contemplates that this will be done in every case. This is what



is meant by the words "complete performance of the contract" and by the words "final settlement thereof." The statute seems to contemplate that all officers and heads of departments of the United States will do their duty and close up contracts and enforce the liability of any party indebted to it. When a bid for public work is made to be done under the Secretary of War, a written guaranty is given that the bidder will make a contract and give a bond. If the bidder fails to comply then the mode of ascertaining the damage is specified by statute. See act March 3, 1883, 22 Stat., 487 (U. S. Comp. St., 1901, p. 2497). Again, by act April 10, 1878, c. 58, 20 Stat., 36, the Secretary of War is authorized to prescribe rules and regulations to be observed in the preparation, etc., for contracts under the War Department. These have been made and the contract in question here follows them. I assume that Congress in enacting the law of February 24, 1905, quoted, had reference thereto. In any event, the bond in question is given by the contractor to the United States, and not to materialmen, and is enforceable by the United States only, except in the cases specified by Congress. The bond and statute are to be read together. While the bond is intended for the benefit of both the United States and persons furnishing material, etc., the remedy of the latter is in the cases and in the way prescribed. The courts can not change the statute or add to the liability of the surety. The surety contracted with reference to the statute and can not be sued on its bond by a person who furnished material to the contractor, except in the cases and on the conditions and on the happening of the events named.

The plaintiff here has not alleged that the contract has been completely performed by any one, or that it has been adjusted or settled, or that the claim of the United States against the contractor or surety has been ascertained or determined, or that the United States has failed to proceed to secure a full completion of the contract, a completion of the work, or a settlement or ascertainment of the liability of the surety to the United States. For anything that appears, the United States is now engaged in securing a complete performance of the contract and a final settlement thereof. I am clearly of the opinion that a failure by the contractor to complete its contract, its insolvency, whatever the cause, its abandonment of the contract, give no right of action to the Watson-Flagg Engineering Company, or right to institute or prosecute this action in the name of the United States. The United States did not institute this action. I have no doubt that act February 24, 1905, c. 778, 33 Stat., 811 (U. S. Comp. St. Supp., 1907, p. 709), repeals the act of August 13, 1894. The act of August 13, 1894, says the act of 1905 "is hereby amended so as to read as follows." The latter act takes the place of the former act in its entirety and covers the whole subject. The plaintiff contends that the words "after the complete performance of said contract and final settlement thereof," or "completion and final settlement," are to be construed as if the statute read: "After the complete performance of said contract and final settlement thereof, or after six months from the time the contract between the contractor and the Government was ended, abandoned or ceased to exist."

I can not so read the statute. But, should we

construe the words to mean ended or ceased to exist, this contract is not ended nor has it ceased to exist. It is a valid existing contract. The contractor failed to perform, became insolvent, and was unable to perform and so abandoned it. "Completion and final settlement," and "complete performance and final settlement," are quite different from abandonment by the contractor.

I do not see any basis for the contention that the United States has waived its right to bring an action at the proper time. There is no such allegation. But, suppose it has, that mere fact gives no right of action to the Watson-Flagg Engineering Company against the surety company. There is no allegation that the United States has failed in any duty, or that it is not proceeding with diligence to secure a full performance of the contract by some one so as to fix the measure of the surety company's liability on the bond. I think that the amendatory act was passed for the purpose of preventing premature actions by materialmen; for the purpose of preventing actions by them until the United States has had full opportunity to secure the construction of the work and ascertain the cost of doing it according to the contract.

It follows that the demurrer must be sustained, with costs, but the plaintiff may serve an amended complaint on payment of such costs and within thirty days.

#### Liability Insurance; Judgment; "Loss."

A liability insurance policy provided that no action should lie thereunder unless brought to reimburse the insured for loss actually sustained and paid by him in satisfaction of a judgment after trial of the issue. An employee recovered judgment against the insured for personal injuries, and release thereof was obtained by giving the insured's note for the amount of the judgment in full satisfaction thereof. The Supreme Court of Washington held, in the case of the Seattle & San Francisco Railway & Navigation Company, that there was a "loss" within the meaning of the policy which would support an action thereunder, notwithstanding the possibility of the insured's insolvency or of compromise for less than the amount of liability under the policy.

#### Liability Insurance; Warranty.

In the case of The B. Roth Tool Company v. New Amsterdam Casualty Company, decided by the United States Circuit Court of Appeals for the Eighth Circuit, it appeared that the plaintiff permitted a person to use its heating furnace for experiments. He filled a metal tube with other metals and explosive substances, sealed the tube and placed the same in the furnace, where it was subjected to a hot fire. It exploded, injuring one of the plaintiff's employees, who recovered a judgment against the plaintiff on the ground that the latter was negligent in carelessly permitting the tube to be filled with materials of a dangerous and explosive nature and placed in a heating furnace. The court held that a judgment in favor of the employee on such issue was conclusive against the plaintiff's right to recover over against an employers' liability company on a policy containing a warranty that the plaintiff should not permit the use of explosives on the premises, which action the liability company defended on the ground of plaintiff's breach of such warranty.

COURT OF APPEALS OF THE DISTRICT OF  
COLUMBIA.

Calendar for October Term, 1908.

## GENERAL CALENDAR.

No. 1798. Thomas J. Myers et al., etc., appellants, v. Lemuel E. Mayhew. Nathaniel Wilson and C. R. Wilson for appellants; W. F. Mattingly for appellee.

No. 1825. The Catholic University of America, a corporation, appellant, v. John F. Waggaman. G. E. Hamilton and J. J. Hamilton for appellant; Wm. F. Mattingly, J. J. Darlington, and Arthur Peter for appellee.

No. 1841. Adams Monroe Mfg. Co. et al., appellants, v. Henry B. F. Macfarland et al. Leo Simmons for appellants; E. H. Thomas and J. F. Smith for appellees.

No. 1852. Amzi L. Barber et al., appellants, v. William Wheeler Smith. A. S. Worthington for appellants; J. C. Gittings and J. M. Chamberlin for appellee.

No. 1853. Charles F. Joy, appellant, v. Joseph Wilson Frost. E. F. Colladay, H. F. Lerch, and Paul E. Slemmon for appellant.

No. 1859. John C. Fay et al., appellants, v. Henry B. F. Macfarland et al. Holmes Conrad and Chas. Poe for appellants; E. H. Thomas and A. B. Duvall for appellees.

No. 1866. Henry B. F. Macfarland et al.; appellants, v. Elizabeth Moore et al. J. F. Smith, for appellants; Conway Robinson for appellees.

No. 1867. Lino F. Rondinella, appellant, v. Southern Rwy. Co., etc. C. C. Tucker and J. M. Kenyon for appellant; G. E. Hamilton for appellee.

No. 1868. Maurice W. Metzler, appellant, v. Harry Kaufman Co., etc. Leon Tobriner for appellant; M. J. Colbert, J. I. Peyser, and Chas. W. Darr for appellee.

No. 1874. The District of Columbia, appellant; v. Harrison G. Brewer. E. H. Thomas and H. P. Blair for appellant; Edwin Forrest for appellee.

No. 1878. Lucien D. Winston, appellant, v. The Arlington Fire Insurance Co. for the District of Columbia. D. S. Mackall for appellant; W. G. Johnson for appellee.

No. 1879. Charles H. Merillat et al., trustees, appellants, v. Melville D. Hensey et al. C. H. Merillat and M. N. Richardson for appellants; A. A. Birney for appellees.

No. 1880. Mary M. Galloway, etc., appellant, v. Thomas F. Galloway et al. W. J. Lambert and Edward McLean for appellant; Malcolm Huffy for appellees.

No. 1885. Dennis C. Shea, appellant, v. Henry B. F. Macfarland et al. Samuel Maddox and H. P. Gately for appellant; E. H. Thomas for appellees.

No. 1886. Arthur Briscoe, appellant, v. Henry B. F. Macfarland et al. Samuel Maddox and H. P. Gately for appellant; E. H. Thomas for appellees.

No. 1889. Joseph T. Ferry et al., etc., appellants, vs. George Henderson. Geo. Francis Williams and A. A. Birney for appellants; Chas. Poe for appellee.

No. 1895. Henry B. F. Macfarland et al., appellants, v. James Elverson. J. E. Smith for appellants.

No. 1896. William G. Cleveland, admr., etc., appellant, v. George H. Harries. R. F. Downing and Geo. A. Berry for appellant; Stuart McNamara for appellee.

No. 1898. Lewis M. Haupt, appellant, v. William H. Taft, etc., et al. Benj. Carter for appellant; D. W. Baker and Stuart McNamara for appellees.

No. 1900. Alexander D. Johnson et al., appellants, v. The Washington Loan and Trust Co. A. S. Worthington for appellants; B. F. Leis for appellee.

No. 1904. Washington, Alexandria and Mt. Vernon Railway Co., etc., appellant; v. Mary Lukens. A. A. Hoebling for appellant; E. S. Bailey and R. T. Strickland for appellees.

No. 1905. The Catholic University of America, etc., appellant, v. Alexander Porter Morse et al. J. W. Yerkes and J. J. Hamilton for appellant; Holmes Conrad for appellees.

No. 1906. W. T. Walker Furniture Co., etc., appellant, v. William H. Dyson. L. A. Bailey for appellant; R. B. Dickey and John Ridout for appellee.

No. 1907. William F. Andrews, appellant, v. Haller Wall Paper Co., etc. E. S. Bailey and J. A. Hicks for appellee.

No. 1908. The American Bonding Co. of Baltimore, etc., appellant, v. U. S. of A., to use of Mary Ann Lucas, etc. M. J. Colbert for appellant; W. J. Lambert and R. H. Yeatman for appellee.

No. 1909. Gus H. Beaulieu, appellant, v. James R. Garfield, etc., et al. C. E. Richardson for appellant; D. W. Baker and Stuart McNamara for appellees.

No. 1910. International Textbook Co., a corporation, appellant, v. The District of Columbia. A. G. Bentley for appellant; E. H. Thomas and H. P. Blair for appellee.

No. 1914. George E. Howard, appellant, v. International Trust Co. of Maryland, a corporation. B. H. Warner, Jr., for appellant; W. C. Clephane for appellee.

No. 1915. George E. Howard, appellant, v. International Trust Co. of Maryland, a corporation. B. H. Warner, Jr. and Levi Cooke for appellant; W. C. Clephane for appellee.

No. 1916. The American Federation of Labor et al., appellants, v. The Buck's Stove and Range Co. J. H. Ralston for appellants; J. J. Darlington for appellee.

No. 1917. Baltimore and Ohio R. R. Co., a corporation, appellant, v. Harrison Crook. G. E. Hamilton for appellant; W. J. Lambert and R. H. Yeatman for appellee.

No. 1919. Minnie T. Ball, admx., etc., appellant, v. United States Express Co. F. J. Hogan for appellant; A. A. Birney for appellee.

No. 1920. G. Lloyd Magruder, appellant, v. William P. Montgomery. J. J. Darlington and R. B. Behrend for appellant.

No. 1921. National Safe Deposit Savings & Trust Co. of the D. of C., appellant, v. William B. Hibbs. A. S. Worthington and C. L. Frailey for appellant.

No. 1922. Alice Hallowell, appellant, v. Harry Darling. R. P. Evans for appellant; W. H. Holloway for appellee.

No. 1923 (vide 1924). John B. Henderson, appellant, v. Henry B. F. Macfarland et al. W. D. Davidge and F. W. McReynolds for ap-

pellant; E. H. Thomas and J. F. Smith for appellees.

No. 1924 (vide 1923). Flora B. Thompson, appellant, v. Henry B. F. Macfarland et al., F. W. McReynolds and D. J. Partello for appellant; E. H. Thomas and J. F. Smith for appellees.

No. 1925. Walter V. R. Berry, appellant, v. District of Columbia. B. S. Minor for appellant; E. H. Thomas for appellee.

No. 1927. Thomas H. Pickford, appellant, v. James L. Hudson, etc. Sam'l Maddox and H. Prescott Gately for appellant; W. M. Ellison and F. E. Mitchell for appellee.

No. 1928 (vide 1929). Harrison Crook, appellant, v. International Trust Co. of Maryland, a corporation. W. J. Lambert for appellant; W. C. Clephane for appellee.

No. 1929 (vide 1928). Harrison Crook, appellant, v. International Trust Co. of Maryland, a corporation. W. J. Lambert for appellant; W. C. Clephane for appellee.

No. 1938. The New York Continental Jewell Filtration Co., appellant, v. The District of Columbia. J. H. Hayden for appellant; E. H. Thomas and H. P. Blair for appellee.

No. 1940. Isaac B. Bursey, appellant, v. Isaac S. Lyon. Wm. Henry White for appellant.

No. 1943 (vide 1944). David Notes et al., appellants, v. Harold E. Doyle. B. F. Leighton for appellants; J. J. Darlington and M. J. Colbert for appellee.

No. 1944 (vide 1943). Julia A. Stearns et al., appellants, v. Harold E. Doyle. B. F. Leighton for appellant; J. J. Darlington and M. J. Colbert for appellee.

No. 1945. The City and Suburban Rwy., etc., appellant, v. Clarence M. Cooper. J. J. Darlington for appellant; Edwin Forrest and J. E. Padgett for appellee.

No. 1953. Elizabeth V. Norris et al., appellants, v. Isabella W. Ashford et al. O. B. Hallam and Wm. Hallam for appellants; W. D. Davidge, Irving Williamson, A. E. L. Leckie, C. M. Fulton, J. W. Cox, H. P. Blair, Corcoran Thom, W. E. Ambrose, B. F. Leighton, J. A. Butler for appellees.

No. 1954. John W. Babson, appellant, v. Francis M. Cox. O. B. Hallam and Wm. Hallam for appellant; T. L. Jeffords for appellee.

No. 1955. Isobel H. Lenman, appellant; v. Thomas R. Jones. A. S. Worthington for appellant.

No. 1957. John Schickler et al., appellants, v. The Washington Brewery Co., etc. J. C. Gittings, J. M. Chamberlin, and J. L. Tepper for appellants; H. F. Woodard for appellees.

No. 1960. Michel O. Dumas, appellant, v. Ellen M. Clayton. L. Melendez King for appellant.

No. 1961. Thomas W. Stubblefield v. Lee A. Stubblefield et al. J. S. Easby-Smith for appellant.

#### SPECIAL CALENDAR.

1 (1792). William Davis, appellant, v. United States. A. S. Worthington for appellant; D. W. Baker and Stuart McNamara for appellee.

2 (1891). United States, appellant, v. John Walters. Stuart McNamara and D. W. Baker for appellant; A. S. Worthington for appellee.

3 (1892). United States, appellant, v. John Walters. Stuart McNamara and D. W. Baker for appellant; A. S. Worthington for appellee.

4 (1897). Alice Tyler Easter, appellant, v. Jack-

son H. Ralston, trustee. Leigh Robinson and Conway Robinson for appellant; E. A. Jones for appellee.

5 (1901). Robert N. Harper, plaintiff in error, v. The United States. J. J. Darlington, C. C. Tucker, B. S. Minor, W. V. R. Berry, and J. M. Kenyon for plaintiff in error; Stuart McNamara for defendant in error.

6 (1912). George B. Cortelyou, Secretary of the Treasury, appellant, v. United States of America on the relation of Francis N. Thorpe. Stuart McNamara and D. W. Baker for appellant; G. E. Hamilton and J. W. Yerkes for appellee.

7 (1913). James Rudolph Garfield, Secretary of the Interior, appellant, v. The U. S. of A. ex rel. Lillie Lowe et al. Stuart McNamara and D. W. Baker for appellant; C. H. Merrill and C. T. Kappler for appellees.

8 (1918). District of Columbia, plaintiff in error, v. William F. Burns. E. H. Thomas for plaintiff in error.

9 (1926). The U. S. of A. ex rel. Lucy Ann Turner et al., appellants, v. James Rudolph Garfield, Secretary, etc. C. J. Kappler and C. H. Merrill for appellants; D. W. Baker for appellee.

10 (1930). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Eugene E. Stevens et al. D. W. Baker and Stuart McNamara for appellant; R. P. Barnard, G. H. Johnson, H. E. Davis, and W. F. S. Curtis for appellees.

11 (1931). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. James H. Spalding. D. W. Baker and Stuart McNamara for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

12 (1932). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Edwin W. Spalding. D. W. Baker and Stuart McNamara for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

13 (1933). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Edgar T. Gaddis. D. W. Baker and Stuart McNamara for appellant; E. C. Brandenburg and F. W. Brandenburg for appellee.

14 (1934). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Eugene E. Stevens et al. D. W. Baker and Stuart McNamara for appellant; R. P. Barnard, G. H. Johnson, H. E. Davis, and W. F. S. Curtis for appellees.

15 (1935). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. James H. Spalding. D. W. Baker and Stuart McNamara for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

16 (1936). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Edwin W. Spalding. D. W. Baker and Stuart McNamara for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

17 (1937). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Edgar T. Gaddis. D. W. Baker and Stuart McNamara for appellant; E. C. Brandenburg and F. W. Brandenburg for appellee.

18 (1939). Sylvia Maria Stadin et al., appellants, v. James Rudolph Garfield, Secretary, etc., et al. W. L. Furbershaw for appellants; D. W. Baker for appellees.

19 (1941). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. of A. ex rel. Eugene E. Stevens et al. D. W. Baker for appellant; Henry

E. Davis, R. P. Barnard, G. H. Johnson, and W. F. S. Curtis for appellees.

20 (1942). David W. Lewis, appellant, v. L. Fleet Luckett et al. J. C. Gittings, J. M. Chamberlin, and R. E. Mattingly for appellant; J. A. Toomey and L. A. Bailey for appellees.

21 (1946). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. ex rel. Harvey Spalding. D. W. Baker for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

22 (1947). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. of A. ex rel. James H. Spalding. D. W. Baker for appellant; C. C. Tucker, J. Miller Kenyon, and E. S. Bailey for appellee.

23 (1948). James Rudolph Garfield, Secretary, etc., appellant, v. U. S. of A. ex rel. Edgar T. Gaddis. D. W. Baker for appellant; E. C. Brandenburg and F. W. Brandenburg for appellee.

24 (1949). The U. S. of A. ex rel. Columbia Heights Realty Co., a corporation, appellant, v. Henry B. F. Macfarland et al. C. A. Douglas and E. B. Sherrill for appellant; E. H. Thomas for appellees.

25 (1950). The U. S. of A. ex rel. Columbia Heights Realty Co., a corporation, appellant, v. Henry B. F. Macfarland et al. C. A. Douglas and E. B. Sherrill for appellant; E. H. Thomas for appellees.

26 (1951). James Rudolph Garfield, Secretary of the Interior, appellant, v. The U. S. of A. ex rel. Edwin W. Spalding. D. W. Baker for appellant.

27 (1952). Cecil French, plaintiff in error, v. The District of Columbia. Chauncey Hackett for plaintiff in error; E. H. Thomas for defendant in error.

28 (1956). Percy Wade, appellant, v. United States. J. E. Laskey for appellant; D. W. Baker for appellee.

29 (1958). Edward Leon Thompson alias Edward Leon, appellant, v. United States. Thos. C. Taylor and G. H. Macdonald for appellant; D. W. Baker for appellee.

30 (1959). Edward B. Moore, Commissioner of Patents, appellant, v. U. S. of A. ex rel. William H. Boyer. W. S. Ruckman for appellant.

#### PATENT APPEALS.

No. 451. In the matter of the application of Thomas M. Gardner. James Hamilton for applicant; W. S. Ruckman for Commissioner of Patents.

No. 501. Albert J. Horton, appellant, v. Paul H. Zimmer. Melville Church for appellant; A. G. Davis for appellee.

No. 504 (vide 505). Nels L. Nelson, appellant, v. Samuel D. Felsing. H. F. Riley and E. G. Siggers for appellant; E. W. Bradford for appellee.

No. 505 (vide 504). Samuel D. Felsing, appellant, v. Nels L. Nelson. E. W. Bradford for appellant; H. F. Riley and E. G. Siggers for appellee.

No. 506 (vide 507). Charlie E. Mark, appellant, v. John E. Greenawalt. Chas. D. Davis for appellant; J. M. Spear for appellee.

No. 507 (vide 506). Charlie E. Mark, appellant, v. John E. Greenawalt. C. D. Davis for appellant; J. M. Spear for appellee.

No. 509. J. A. Scriven Co., appellant, v. The W. H. Towles Mfg. Co. et al. Arthur v. Briesen

for appellant; Arthur Steuart for appellees.

No. 510. J. A. Scriven Co., appellant, v. Ferguson-McKinney Dry Goods Co. Arthur v. Briesen for appellant; S. S. Watson for appellee.

No. 511. Oswego Maize Products Co., appellant, v. National Starch Co. W. G. Henderson for appellant; S. L. Moody for appellee.

No. 512. Oswego Maize Products Co., appellant, v. National Starch Co. W. G. Henderson for appellant; S. L. Moody for appellee.

No. 513. Albert H. Geltz et al., appellants, v. John M. Crozier. W. B. Corwin for appellants; J. F. Williams and C. J. O'Neill for appellee.

No. 514. In the matter of the application of Solomon C. Herbst. L. S. Bacon for applicant; F. A. Tennant for Commissioner of Patents.

No. 515. James R. Moffatt, appellant, v. John P. Weis. C. L. Sturtevant for appellant; C. McC. Chapman for appellee.

No. 516. Franklin G. Neuberth, appellant, v. Joseph Lizotte. Horace Van Everen, Benj. Phillips, and W. G. Ogden for appellant.

No. 517. Walter Baker & Co., Limited, appellant, v. John W. Harrison. H. A. Dodge for appellant.

No. 518. Hutchinson, Pierce & Co., appellants, v. Joseph Loewy. W. G. Henderson, for appellants; E. T. Fenwick and L. L. Merrill for appellee.

No. 519. Tod J. Mell, appellant, v. Thomas Midgley. W. E. Dyro for appellant; W. B. Corwin for appellee.

No. 520. Perrie H. Auxer, appellant, v. Charles L. Peirce, Jr. W. D. Grossbeck for appellant.

No. 521. In the matter of the application of Henry S. Blackman, C. L. Parker for applicant; F. A. Tennant for Commissioner of Patents.

No. 522. In the matter of the application of Darius M. Orcutt, etc. J. C. Pennie and C. J. O'Neill for applicant; F. A. Tennant for Commissioner of Patents.

No. 523. Udell-Predock Mfg. Co., appellant, v. The Udell Works. F. J. Kent and J. L. Hopkins for appellant.

No. 524. William L. Bliss, appellant, v. William I. Thomson. J. R. Edson for appellant.

No. 525 (vide 526 and 527). Hugh L. Thompson, appellant, v. Lester C. Smith et al. Melville Church for appellant; E. C. Brown and Milton E. Robinson for appellees.

No. 526 (vide 525 and 527). Adelbert P. Hine, appellant, v. Hugh L. Thompson et al. E. C. Brown for appellant; Milton E. Robinson and Melville Church for appellees.

No. 527 (vide 525 and 526). Adelbert P. Hine, appellant, v. Lester C. Smith. E. C. Brown and Milton E. Robinson for appellant.

No. 528. Elisha J. Steele et al., appellants, v. Lester C. Smith. E. C. Brown for appellants; Milton E. Robinson for appellee.

No. 529. Abraham Sydeman et al., appellants, v. Andrew Thoma. Nathan Heard for appellants; Horace Van Everen for appellee.

No. 530. Charles Dennehy & Co., appellant, v. Robertson, Sanderson & Co., Ltd. A. E. Wallace for appellant; Marcellus Bailey for appellee.

No. 531. Heber C. Peters, appellant, v. William Henry Pike, Jr. F. P. Davis for appellant.

No. 532. Wayne County Preserving Co., appellant, v. The Burt Olney Canning Co. Theodore K. Bryant and H. P. Denison for appellee.

No. 533. Phoenix Paint & Varnish Co., appel-

lant, v. John T. Lewis & Bros. Co. T. W. Johnson for appellant; F. M. Phelps for appellee.

No. 534. Charles W. Johnson, appellant, v. Adam Brandau. T. E. Robertson and B. R. Johnson for appellant; H. P. Doolittle for appellee.

No. 535. General Railway Signal Co., a New York corporation, assignee of Fitzhugh Townsend, deceased, appellant, v. Louis H. Thullen. E. C. Brown for appellant; Geo. E. Cruse for appellee.

No. 536 (vide 537). Charles A. Rolfe, appellant, v. William Kaisling et al. A. M. Belfield, L. S. Bacon, and J. H. Milans for appellant; G. R. Hamlin for appellee.

No. 537 (vide 536). Charles A. Rolfe, appellant, v. Edward W. Leeper. A. M. Belfield, L. S. Bacon, and J. H. Milans for appellant; G. R. Hamlin for appellee.

No. 538. In the matter of the application of Meyer Brothers Coffee & Spice Co. J. A. Carr for applicant; W. S. Ruckman for Commissioner of Patents.

No. 539. In the matter of the application of Arthur C. Eastwood. W. L. Pierce and Karl Fenning for applicant; W. S. Ruckman for Commissioner of Patents.

No. 540. In the matter of the application of Bruns A. Berger. W. G. Henderson for applicant; W. S. Ruckman for Commissioner of Patents.

No. 541. Charles R. Schmidt, appellant, v. George Clark. T. A. Connolly and J. B. Connolly for appellant.

No. 542. Johnson & Johnson, a corporation, appellant, v. Mary C. Whelan. W. G. Henderson for appellant.

No. 543. Henry H. Wainwright, appellant, v. John W. Parker. D. Walter Brown for appellant.

No. 544. Merritt S. Conner, appellant, v. William W. Dean. J. C. Pennie, C. J. O'Neill, and C. A. Brown for appellant.

No. 545. In the matter of the application of The New South Brewery & Ice Co. E. T. Fenwick for applicant; W. S. Ruckman and T. A. Tennant for Commissioner of Patents.

No. 546. In the matter of the application of Henry H. Cutler. Jos. R. Edson for applicant; W. S. Ruckman and T. A. Tennant for Commissioner of Patents.

No. 547. In the matter of the application of Herman C. Wolterreck. F. C. Somes for applicant; T. A. Tennant for Commissioner of Patents.

#### Unreasonable Nonuse of Patent by Patentee.

A question of patent law upon which there has been some difference of opinion among the Circuit Courts of Appeals has been recently authoritatively determined in the Supreme Court. Does a patentee forfeit his rights under his patent by a neglect to make use of the patent, or by a neglect for an unreasonable length of time to use it? Can such a patentee who is not himself making any use of his monopoly secure an injunction against infringement? In the Paper Bag Patent Case, 210 U. S., 405, the court decides that the patent laws confer an absolute and exclusive right on the patentee, and for his exclusive rights during the period of monopoly the public faith is pledged. It follows that a patentee may maintain an injunction whether or not he is taking advantage of the rights conferred by the law. The court quotes from *U. S. v. Bell Telephone Co.*, 167 U. S., 224, as follows: "Counsel seem to argue that one who has made an invention and thereupon applies for

a patent therefor occupies, as it were, the position of a quasi-trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dissent entirely from the thought thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold a knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention." Such a right defined and guaranteed by law differs widely from the right to a trade-mark or trade name, which may be lost by nonuser. *Raymond v. Royal Baking Powder Co.*, 85 Fed. Rep., 231, affirming 70 Fed. Rep., 376; *Julian v. Hoosier Drill Co.*, 78 Ind., 408.

#### Railroad; Negligence; Skilled Engineer.

In the case of *Adams v. New York, New Haven & Hartford Railroad Company*, the Supreme Judicial Court of Massachusetts set aside a verdict for \$15,000 obtained by the plaintiff. The latter was an engineer in the employ of the defendant company, and was seriously injured through the engine leaving the track while rounding a curve in running from Plymouth to Boston. The plaintiff alleged that the engine was defective, and that he had previously made both oral and written reports as to its condition. It appeared that at the time of the accident the train was running at the rate of forty-five or forty-eight miles an hour, the engineer endeavoring to make up for lost time. The Supreme Court held that the trial court should have directed a verdict for the defendant. The appellate tribunal said that the plaintiff was a skilled man both as a mechanic and as an engineer, and knew all that the company knew or was chargeable with knowing, so that both parties stood on an equal footing as far as negligence was concerned.

#### Promissory Note; Defense; Fraud.

The case of *Arnd v. Heckert*, recently decided by the Maryland Court of Appeals, arose out of an action upon a promissory note. The defendant pleaded that the obligation was a "false and fraudulent paper, and that the plaintiff took it well knowing it to be obtained by fraud." On the trial the defendant, the maker, testified that the payee promised to get him within ten days a ten-year policy in a fire insurance company if he would sign a note for \$100, but that the company would not insure the barn unless a lightning rod was put up, and that he, the maker, paid him \$10 in cash to place the rod on his barn, which he did in forty-five minutes and then left, and that he, the maker of the note, never received the policy and was unable to ascertain anything about the company. The plaintiff said that he bought the note for \$90; that he did not know the maker except that he was represented to be a responsible man; that he did not know the payee, and that the note when it became due was not protested against the payee who had endorsed it. The court held that the circumstances in the case were too suspicious to be consistent with any rational theory of good faith on the part of the plaintiff, and that the prayer in which he sought to take the defense of fraud from the jury was properly refused.

**Negligence of Fellow-Servant; Proof of Incompetency.**

In *Wooden v. Pittsburgh Railways Co.*, decided by the Court of Common Pleas of Alleghany County, it was held that the fact that a motorman is incompetent may be proved by his general reputation; but such evidence must be accompanied by evidence of actual incompetence, and must be his reputation prior to the accident. In disposing of a motion to set aside a nonsuit, the court said:

The plaintiff was a conductor on a car of defendant company, and claims that he was injured by being thrown from the car through the carelessness or negligence of the motorman, upon the same car, in its management. This negligence was sought to be proven solely by testimony showing the general reputation of the motorman for incompetence and carelessness, and that although this reputation was well known to the defendant company, the motorman continued in its employment.

The question is, was the evidence sufficient for the purpose named? In some States evidence of general reputation to establish incompetency or negligence on the part of a fellow-servant, is admitted, and in this State in *Frazier v. P. R. R.*, 38 Pa., 104, it would seem that this was the only evidence admitted, offers of evidence of special acts having been rejected. Such ruling has been much criticised, although followed in *Snodgrass v. Carnegie Steel Co.*, 173 Pa., 228. The proper practice would seem to be that the plaintiff, upon whom is the burden of proving the negligence, should first show that the accident happened through the negligence or incompetency of the servant and that he was actually unfit through such negligence or incompetency, and that his general reputation for such incompetency was such that the defendant either knew or was presumed to know it. However this may be, it does not seem to us that the evidence in this case was sufficient to establish the negligence or incompetency of the motorman. In the first place, it did not show his general reputation, but only his reputation among the motormen and employees of the defendant company at one of its car barns, and in the second place, the reputation for incompetency testified to, seems to have been acquired after the accident in which the plaintiff was injured.

We think the nonsuit was properly granted. The motion to take it off must be refused and it is so ordered.

**Appeal and Error; Presumptions on Appeal in Support of the Judgment.**

[Central Law Journal.]

The Court of Appeals of California has jumped from one side to the other side of the same question, when in the recent case of *Lunnun v. Morris* (95 Pac., 907), they held in the first opinion in that case that in support of a judgment all proceedings necessary to its validity will, on appeal, be presumed to have been regularly taken, and on rehearing held that an appellate court could no more assume that error appearing therein was cured by some matter which is not contained in the bill of exceptions, than it could consider matters outside

of the judgment roll for the purpose of impeaching the correctness of the judgment.

The facts in this case which occasioned the court so much embarrassment were these: The plaintiff's attorney failed to take a default against the defendant after the time had gone by for filing an answer. Just preceding the hearing on the case defendant filed his answer. Attorneys for defendants thereupon called the attention of the court to the filing of the answer, and objected to the introduction of any testimony, for the reason that the case was at issue and had not been regularly set for trial, and that they had no notice of trial under section 594 of the Code of Civil Procedure. Plaintiff asked that the default of defendants be entered, and that the testimony of plaintiff's witnesses be heard, upon the ground that the time for the filing and serving of said answer had expired before the same had been filed. Defendants then asked leave of the court to prepare motion, affidavits, etc., upon an application to be relieved from the failure to serve and file their answer within the time allowed by law, on the ground of mistake, inadvertence, and excusable neglect of defendants' counsel. By consent, the attorney for defendants made a statement in open court of the facts upon which he based said motion for relief and introduced the verified answer as an affidavit of merits. His statement was accepted as true for the purpose of the motion, and, together with said answer, appears in the bill of exceptions in the record. The evidence on behalf of plaintiff in the cause was then heard and the objection and motion of defendants taken under submission, and thereafter, on the 2d day of January, 1907, the objection was overruled and the motion denied. Judgment by default in favor of plaintiff for the recovery of the premises was filed January 5, 1907, and the recital in this judgment shows that it was made upon a hearing had on December 31, 1906, at which time evidence was introduced on behalf of plaintiff. The above-mentioned appearance of defendants, the extension of time to plead, and their failure to answer within said time are recited in the judgment.

On appeal the question was whether the trial court on its own motion or on motion of plaintiff had stricken defendant's answer from the file before default was entered, for, otherwise the action of the court would have been invalid under the general rule that a default should not be entered until the answer shall have first been stricken from the files. See 6 Ency. Pl. & Pr., pp. 82, 85.

The argument on appeal by the respondent was that the law would presume that the answer was stricken from the files before default was entered in the absence of any contrary showing in the bill of exceptions. The court on appeal adopted this view on the first hearing, using this language: "There is nothing in the bill of exceptions to show that any motion was made to have the answer stricken from the files, nor does it appear that the court of its own motion did this. Neither is there anything in the record to negative this; that is, to show that no such motion was made or that such action was not taken. The bill of exceptions contains merely the recital that 'the following proceedings were had therein.' It nowhere appears that the proceedings displayed and the action taken were all the proceedings had or acts done. In the absence of such showing, the pre-



sumption must be in favor of the court having done every act necessary to sustain the judgment. In support of the judgment all proceedings necessary to its validity will be presumed to have been regularly taken, and any matters which might have been presented to the court below, which would have authorized the judgment, will be presumed to have been thus presented, if the record shows nothing to the contrary. *Von Schmidt v. Von Schmidt*, 104 Cal., 547, 38 Pac., 361."

We do not see why the court should have changed its position on this question. The bill of exceptions is the statutory record as distinguished from the pleadings and judgment which constitute the mandatory record. No statute can amalgamate these two records so as will raise the one to the dignity of the other or lower the superior importance of the one to the level of the other. The judgment is the supreme event in any judicial proceeding and all other events are presumed to shape themselves in conformity to this supreme attainment unless the contrary appear. To make the validity of a judgment depend on affirmative showing in the bill of exceptions, whose main purpose is simply to advise the appellate courts of errors committed by the trial court to which exceptions have been duly taken, that every minute detail of the trial has proceeded in its proper order, is out of the question and violates all principles of procedure. The authorities are almost unanimous to the contrary. 2 Cyc., p. 266, is the beginning of a discussion of a subdivision under the general title of appeal and error, entitled "Presumptions and Interferences upon the Record," which shows the tendency of the appellate courts to exalt the judgment and to multiply the presumptions of regularity to such extent that only the absence of the most essential requisites in the bill of exceptions will invalidate a judgment. On page 275, the learned author says: "The judgment appealed from is presumed to be right until, by an affirmative showing on the record, the contrary is established. It follows, therefore, that every reasonable intendment and presumption will be resolved against the appellant and in favor of the correctness of the proceedings below." Numerous illustrations are given of the wide extent of this presumption in upholding the judgment and in requiring an affirmative and not a negative showing from the record itself that the necessary steps to sustain the judgment were not taken or were not taken in their proper order, before the judgment will be reversed.

#### Dying Declarations; Leading Questions and the "Opinion Rule."

[New York Law Journal.]

The State of Texas has a statute, of the policy of which we approve, providing in order to render a dying declaration competent that "it must be satisfactorily proved that the same was voluntarily made without persuasion of any person," and that it "was not made in answer to interrogatories calculated to lead the deceased to make any particular statement." Under this enactment it was recently held by the Court of Criminal Appeals of Texas, in *Lockhart v. State* (111 S. W., 1024), that error had been committed in admitting the following narrative of a conversation between deceased and the wife of the witness:

"Q. Was anything else said about shots and

about the shooting? A. My wife said, 'didn't you try to keep him from shooting you?' and he said he tried to take the gun away from him, but the first shot numbed him so he could not."

This declaration is held to be in response to a leading and suggestive question, and, therefore, inadmissible as a dying declaration.

In another portion of the same narrative it was stated that in answer to a question by the witness' wife as to the cause of the shooting the deceased responded: "For nothing." The majority of the court hold that the statement that appellant killed deceased "for nothing" was competent as a dying declaration. The writer of the opinion, however, entertains the view that the evidence of this utterance is also inadmissible because, "it is an expression of opinion or conclusion of the declarant, not even reaching the dignity of a shorthand rendering of the facts." In support of this latter view are cited a large number of authorities, and we believe it is correct. We can not see how the declaration in question differs at all from "they murdered me without cause," which was held incompetent in the earlier Texas decision in *Batson v. State* (46 Tex. Cr. R., 35). In that case the proper rule was laid down that "a witness can only state matter involved in a dying declaration to which deceased could testify if alive and a witness on the stand, and could not give in evidence matters of opinion."

On several occasions we have expressed the view that the so-called "opinion rule" should be stringently administered with regard to dying declarations. It would seem that where the public policy of a State has been so clearly indicated by the adoption of a statute expressly condemning dying declarations made in response to leading questions, the courts should refrain from relaxing the "opinion rule," which is a safeguard similar to the statute itself against the same danger of injustice to a criminal defendant. Because the legislature chose to cover one particular point on which the law may have been doubtful there was no reason for inferring that it intended to change the common law of the State in other respects.

The court is unanimously of opinion that these alleged declarations made twenty minutes after the shooting were not admissible as *res gestæ*, as the statement on the part of the decedent constituted merely a narrative of a past and completed transactions and also, as would seem from the reasoning, because the declarations were not spontaneous, but in reply to questions suggesting answers.

#### Written Contract; Alteration by Parol.

In *Baltimore Refrigerating, etc., Co. v. Wetzel*, in the United States Circuit Court of Appeals, Fourth Circuit (May, 1908, 162 Fed., 117), was held that a written contract can not be changed after its execution by a parol agreement unless in exceptional cases and upon a valuable consideration. It was actually decided that in an action to recover the price of machinery sold under a written contract evidence offered by defendant to show that the machinery failed to comply with a warranty contained in a prior contract between the parties, which had been fully executed, on the claim that such warranty had been incorporated in the second contract by parol agreement made after its execution, had properly been excluded as irrelevant to the issues.

**Landlord and Tenant.**—An agreement for second renewal of a lease is held, in *Drake v. Board of Education*, 208 Mo., 540, 106 S.W., 650, 14 L. R. A. (N. S.), 829, not to be inferred from a general provision for the insertion in the first renewal of all the covenants of the first lease, one of which provides for renewal.

A landlord, although not equipping his building with such leader pipes and conductors as a statute requires, is held, in *Coman v. Alles* (Mass.), 83 N. E., 1097, 14 L. R. A. (N. S.), 950, not to be liable for an injury caused by snow and ice falling therefrom, where the tenant who allowed them to accumulate had complete control over the entire building, under a lease requiring him to repair and to hold the landlord harmless from damage claims for failure to remove snow and ice from the roof and sidewalks.

The fact that a written extension of a lease was executed by the lessors when insane is held, in *Quinn v. Valiquette*, 80 Vt., 434, 68 Atl., 515, 14 L. R. A. (N. S.), 962, to be of no importance where the original lease, executed when the lessors were sane, provided for an extension, as distinguished from a renewal, of the lease, and the lessee holds over, thereby exercising his option to enlarge the term.

**Limitations.**—The words "when a cause of action has arisen," in a foreign State, as used in the Kansas statute of limitations, providing that, when a cause of action has arisen in another State between non-residents and has become barred in that State by lapse of time, no action on it can be maintained in the State, are held, in *Bruner v. Martin* (Kan.), 93 Pac., 165, 14 L. R. A. (N. S.), 775, to mean when the cause of action has accrued in a foreign State, or when plaintiff has a right to sue defendant in the courts of such State, and to have no reference to the origin of the transaction out of which the cause of action arose.

A statute prohibiting a suit on a cause of action barred by lapse of time in the jurisdiction in which the cause of action arose is held, in *McKee v. Dodd* (Cal.), 93 Pac., 854, 14 L. R. A. (N. S.), 780, to have reference only to the primary and original jurisdiction in which it arose, and not to contemplate other jurisdictions in which a cause of action may arise or accrue because defendant takes up his domicile therein.

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FOUNDED 1789.

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Court of Appeals—MESSRS. LEIGH ROBINSON, J. HOLDSWORTH GORDON, J. NOTA MCGILL.  
Clerk of Court: FRANK E. CUNNINGHAM.  
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(United States Attorney for the District of Columbia),  
On General Practice and Exercises in Pleading and Evidence.  
FREDERICK VAN DYNE  
(Late Assistant Solicitor, Department of State),  
On Citizenship.

The thirty-eighth annual session opens Wednesday, September 30, 1908, at 6.30 p. m., in the Law School Building, 548 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

TUITION.....\$100.00

The Secretary will be at his office in the Law Building daily for information, enrolment, payment of fees, etc. Students proposing to connect themselves with the school are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowdermilk & Co., 1424 F street northwest, and John Byrne & Co., 1322 F street northwest, or upon application to the undersigned.

R. J. WATKINS,  
Secretary.

**Deeds.**—An unrecorded deed is held, in *McCalla v. Knight Invest. Co.* (Kan.), 94 Pac., 126, 14 L. R. A. (N. S.), 1253, to take precedence over a judgment against the grantor, rendered subsequent to its delivery.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Newton & Gillett, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Bryson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. ELIZABETH T. BRYSON, 714 12th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,417. Administration. [Seal.] 40-St

Henry C. Stewart, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann Eliza Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. HENRY C. STEWART, 617 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,514. Administration. [Seal.] 40-St

R. L. Montague, J. A. Moriarty, and L. A. Bailey,  
Solicitors

In the Supreme Court of the District of Columbia.

**Mary V. Mueller, Petitioner, v. Martin Mueller et al., Defendants.** No. 27,824. Equity Doc. 61.

The object of this suit is a divorce from the bond of marriage between the petitioner, Mary V. Mueller, and the defendant, Martin Mueller, custody of their infant child and other and general relief. The grounds are adultery, drunkenness, and cruelty. On motion of the petitioner, it is this 1st day of October, 1908, ordered that the defendant, Martin Mueller, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 40-St

### Legal Notices.

Lambert & Yeatman, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel F. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS F. SHOEMAKER, 612 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,528. Administration. [Seal.] 40-St

Wm. M. Lewin, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza J. Hyland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. CHARLES H. HYLAND, 835 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,477. Administration. [Seal.] 40-St

Lambert & Yeatman, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Catharine E. Gaskins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS F. SHOEMAKER, 614 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,386. Administration. [Seal.] 40-St

Frank S. Bright, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Augusta Louisa Weisenborn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. FRANK S. BRIGHT, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,521. Administration. [Seal.] 40-St

C. Clinton James, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Margaret A. Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. MAGGIE E. LITTLE, 1011 E. St. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,548. Administration. [Seal.] 40-St

**Legal Notices.****Berry & Minor, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Biagio Giuseppe Corio**, otherwise known as **Giuseppe Corio** and as **Leo Corio**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1908. **HUGH B. ROWLAND**, Colorado Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,506. Administration. [Seal.] 40-3t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of **Sarah J. Lewis**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of September, 1908. **UNION TRUST COMPANY**, by **George E. Fleming**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,578. Administration. [Seal.] 40-3t

**E. H. Thomas and A. B. Duvall, Attorneys****In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In re the Extension of an Alley in Square 1036 in the District of Columbia.** District Court, No. 781.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1608 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the extension of an alley in square numbered ten hundred and thirty-six (1036), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of said alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 28th day of September, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 14th day of October, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered that a copy of this notice and order be published once in *The Washington Law Reporter* and once in *The Washington Evening Star*, *The Washington Herald*, *The Washington Times*, and *The Washington Post*, newspapers published in the said District, before the said 14th day of October, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 14th day of October, A. D. 1908. By the Court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. [Seal.] 40-1t

**Legal Notices.****Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.**

**In re The Opening of an Alley in Square 3516, in the District of Columbia.** District Court, No. 785.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1608 et seq. of the Code of Laws of the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square numbered thirty-five hundred and sixteen (3516) in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of said alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings as provided for in and by the aforesaid Code of Laws. It is, by the court, this 28th day of September, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 14th day of October, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered that a copy of this notice and order be published once in *The Washington Law Reporter* and once in *The Washington Evening Star*, *The Washington Herald*, *The Washington Times* and *The Washington Post*, newspapers published in the said District, before the said 14th day of October, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 14th day of October, A. D. 1908. By the court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. [Seal.] 40-1t

**William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of **Maria Williams**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of September, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by **William A. McKenney**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,561. Administration. [Seal.] 40-3t

**SECOND INSERTION.****Darr, Peyser & Curtin, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Helen V. E. Strecker**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. **FREDERICK W. BERGMAN**, Suitland, Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,492. Administration. [Seal.] 39-3t

**Legal Notices.**

Henry C. Stewart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Frank F. Burke, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 23d day of September, 1908. JAMES M. GREEN, PATRICK J. WALSH, by Henry C. Stewart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,772. Administration. [Seal.] 39-3t

Edward S. Bailey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Adella L. S. Thoms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of September, 1908. CHARLES H. HORTON, 134 Mass. ave.; BENJAMIN G. POOL, 945 E. I. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,810. Administration. [Seal.] 39-3t

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John R. Garrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of September, 1908. JENNIE GARRISON, FIELDING H. GARRISON, 1487 R. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,600. Administration. [Seal.] 39-3t

Geo. Francis Williams, Attorney  
In the Supreme Court of the District of Columbia.  
Lulu Tippin v. Alice C. Burr et al.  
No. 27,612. In Equity.

George Francis Williams, trustee, having reported that he has sold at private sale, subject to the confirmation of the court, as heretofore authorized, lot 34 and the north 5 feet front by depth of lot 35 in King's subdivision of Long Meadows, in this District, unto Henry F. Houck for two hundred and twenty-five dollars. It is, this 25th day of September, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 26th day of October, 1908. Provided this order be published once a week for three successive weeks before that day in The Washington Law Reporter. [Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-3t

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**Legal Notices.**

Crandall Mackey, Solicitor  
In the Supreme Court of the District of Columbia.  
Charles W. Jarrell, Complainant, v. Sadie E. Jarrell, Defendant. Equity, No. 27,994.

ORDER OF PUBLICATION.  
The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. On motion of the complainant, it is, this 22d day of September, A. D. 1908, ordered that the defendant, Sadie E. Jarrell, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The [Seal] Washington Herald. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-3t

G. F. Williams, Solicitor  
In the Supreme Court of the District of Columbia.  
Lulu Tippin v. Alice C. Burr et al.  
No. 27,612. In Equity.

George Francis Williams, trustee in the above entitled cause, having reported that he has made the following sales at public auction, namely, part of lot 19 in Rothwell and Naylor's subdivision of square 425, in the city of Washington, with improvements, unto Charles T. Burns for \$1,100.00; premises 1242 Bladensburg Road, being parts of lots 28 and 29 in King's subdivision of Long Meadows, in the county of Washington, District of Columbia, unto Henry F. Houck for \$650; premises 1244 Bladensburg Road, being part of lot 29 in said King's subdivision of Long Meadows, unto said Henry F. Houck for \$650; premises 1246 Bladensburg Road, being parts of lots 29 and 30 of said King's subdivision of Long Meadows, unto John Bello for \$305. It is this 22d day of September, 1908, ordered, that all of said sales be confirmed by the court, unless cause to the contrary be shown on or before the 22d day of October, 1908. Provided this order be published once a week for three successive weeks before said last mentioned [Seal] day in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-3t

Brandenburg & Brandenburg, Solicitors  
In the Supreme Court of the District of Columbia.  
The Edes Home, a Corporation, v. Basil Waters et al.  
No. 27,622. Eq.

The object of this suit is to quiet title and establish of record by adverse possession a good title in fee simple in the complainant to the north part of the lot of ground known as lot 221, in Beatty & Hawkins' addition to that part of the District of Columbia formerly known as Georgetown, and described as being the fifty-nine feet six inches on the west side of Market street and running back the full depth of said lot, more particularly described in the bill of complaint, and restrain and enjoin the defendants from setting up, claiming, or asserting any title thereon. On motion of the complainant, by its solicitors, Brandenburg & Brandenburg, it is this 23d day of September, A. D. 1908, ordered that the defendants, Basil Waters, Ignatius Waters, Zedock Waters, Mary A. Waters, Mary E. Waters, Lottie Waters, Hood Waters, Virginia Waters, Eliza Waters, William Waters, Susan Gibson and her husband, ——— Gibson; Agnes Gibson, Anna Dorsey and her husband, ——— Dorsey; Fannie Pennington and her husband, ——— Pennington; Agnes Gibson, James Gibson, Nanie Kimmell, Agnes Dorsey and her husband, Harry Dorsey; Sarah Dorsey, William A. Waters, Zechariah D. Waters, Washington Waters, Washington D. Waters, B. Worthington Waters, Thomas W. Waters, Ignatius Waters, T. Sollers Waters, Fannie W. Lerner, if they be living, or if any or all of them be dead, then the unknown heirs, alienees, or devisees of any or all of them, cause their appearance to be entered herein on or before the first day occurring three months after the date of the expiration of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three consecutive months in The Washington Law Reporter and The Evening Star before said date. By the [Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept. 25; oct. 2, 30; nov. 6, 27; dec. 4.

**Legal Notices.**

**Richard A. Ford, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Alexander J. Bentley**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **23d day of September, 1908**. **ALEXANDER GARNER BENTLEY**, Union Trust Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,442. Admn. [Seal.] 39-3t

**George E. Fleming, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles E. Stellwagen**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **23d day of September, 1908**. **EDWARD J. STELLWAGEN**, Union Trust Co. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,512. Administration. [Seal.] 39-3t

**Raleigh Sherman, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **William A. Wroe**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **23d day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **23d day of September, 1908**. **RALEIGH SHERMAN**, 1410 H st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,118. Administration. [Seal.] 39-3t

**Wm. E. Ambrose, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Michael Clarke**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **21st day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **21st day of September, 1908**. **MICHAEL P. CLARKE**, 1100 21st st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,502. Administration. [Seal.] 39-3t

**THIRD INSERTION**

**R. Ross Perry, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Jane Perry**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **15th day of September, 1908**. **R. ROSS PERRY**, Fendall Bldg. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,451. Admn. [Seal.] 39-3t

**Legal Notices.**

**Thomas P. Woodward and W. Mosby Williams,**  
**Solicitors**

**In the Supreme Court of the District of Columbia.**

**John Kennedy, Complainant, v. Kunigunda Heisler et al. Equity, No. 27,900.**

The object of this suit is to establish that **John Heisler** and **Kunigunda Heisler**, his wife, signed the deed recorded in **liber J. A. S. 22, folio 468**, and to declare complainant's title perfect by adverse possession to the north 14 feet front on 7th street by the full depth that width of original lot 7 in square 447, situate in the city of Washington, in the District of Columbia, as more fully set forth in the bill. On motion of the complainant, it is, this 14th day of September, 1908, ordered that the defendant, **Kunigunda Heisler**, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, alienees, and devisees of **John Heisler**, deceased, of **Kunigunda Heisler**, deceased, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after six weeks from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for the first four weeks prior to said rule day in **The Washington Law Reporter**, for good cause shown a longer period of publication being dispensed with.

[Seal] **ASHLEY M. GOULD**, Justice. A true copy.  
 Test: **J. R. Young**, Clerk, by **Wms. F. Lemon**, Asst. Clerk. 38-4t

**W. J. Lambert, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Helen Von der Tann v. John B. Lybrook.**

No. 23,002, Equity Doc. —

The object of this suit is to appoint a trustee or trustees with full power and authority to execute the trusts of the deed of trust, dated May 29th, 1905, and recorded in **liber No. 2011, at folio 372 et seq.**, one of the land records of the District of Columbia, the trustees named in said deed of trust having died. On motion of the complainant, it is, this 15th day of September, 1908, ordered that the defendant, **John B. Lybrook**, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in **The Washington Law Reporter** and **The Washington Post** before said day. **ASHLEY M. GOULD**, Justice. 38-3t

**Robinson White, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John A. McDonald**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **14th day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **14th day of September, 1908**. **GEORGIANNA McDONALD**, 3327 Brightwood ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,372. Admn. [Seal.] 38-3t

**Arthur Peter, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **George Bobinger**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **15th day of September, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this **15th day of September, 1908**. **LOUISE MARGRETT BOBINGER**, Cabin John Hotel, Md. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,180. Administration. [Seal.] 38-3t



**Legal Notices.**

**George C. Shinn, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Samuel Bell, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of September, 1908. FRANK C. STRATTON, 1018 E. Cap. st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,491. Administration. [Seal.] 38-31

**D. W. Baker, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as a District Court.**  
 No. 780.

In the matter of the condemnation of squares two hundred and twenty-six (226), two hundred and twenty-seven (227), two hundred and twenty-eight (228), two hundred and twenty-nine (229), and two hundred and thirty (230), in the city of Washington, in the District of Columbia, for use and accommodation of the United States Departments of State, Justice, and Commerce and Labor, it is ordered, this 16th day of September, A. D. 1908, that the order of publication heretofore issued and published in The Washington Star and The Washington Post and The Washington Law Reporter be amended by adding the following names: Henrietta Harvey Dyer, Margaret E. Long, Florence Dyer Berry, Daisy Dyer Howard, and Andrew J. Miller, and that said publication be continued as heretofore ordered. By the Court: ASHLEY M. GOULD, Justice. A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk. 38-41

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

Estate of Marie F. Seltz, Deceased.  
 No. 15,331. Administration Docket 38.  
 Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jos. A. Burkart, it is ordered, this 14th day of September, A. D. 1908, that Ida Seltz, and all others concerned, appear in said court on Tuesday, the 20th day of October, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] day. ASHLEY M. GOULD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 38-31

**C. C. Calhoun, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sylvanus E. Johnson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 14th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 14th day of September, 1908. BERTHA B. JOHNSON, 1330 Vermont ave.; PHILANDER C. JOHNSON, care of The Evening Star. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,431. Admn. [Seal.] 38-31

**FOURTH INSERTION.**

**J. J. Darlington and W. C. Sullivan, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Julia Ten Eyck McBlair et al. v. George F. Green et al.**  
 No. 27,887 Equity Doc. —.

The object of this suit is to declare complainants' title perfect, by adverse possession, to original lots numbered eight (8) and eleven (11) in square numbered seventy-eight (78), Washington, District of Columbia, as

**Legal Notices.**

described in the bill. On motion of the complainants, it is, this 28th day of August, A. D. 1908, ordered that the defendants, Mary I. Lewis, Alice Q. Bruce, Rousby Quinsbury, Belle P. Quinsbury, Emma L. Quinsbury, Emma Rose Quinsbury, Eastmon P. Green, Easle C. Gandell, John W. Sykes, Mary Sykes Findley, Daniel P. Wirt, Augusta Wirt Nalle, Forrest Tayloe, and Louisa D. Tayloe, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and allies of Charles Gilchrist, John Hewitt, Uriah Forrest, Rebecca Forrest, George Forrest, Benjamin S. Forrest, Ann Green, Maria Tayloe Bohrer, Maria G. D'vereux, Rebecca Ann Green or Ann Rebecca Green, Elizabeth R. Quinsbury, Alice G. de Yturbe, Osceola C. Green, Nicholas Quinsbury, John Tayloe, 3d, John Tayloe, 4th, Maria Tayloe Sykes, Catherine Tayloe Wirt, and of each of them, cause their appearance to be entered herein on or before the first rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, for the first month, and twice a month for the two succeeding months [Seal] in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 28; sept. 4, 11; oct. 2, 9; nov. 6, 13

**Edwin L. Wilson, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Edwin L. Wilson v. Samuel Eliot, Junior, et al.**  
 Equity. No. 27,976.

The object of this suit is to establish title to the north 100 feet of lots 20, 21, and 22, by the full width thereof, and all of lots 23 and 24, in square 883, in the city of Washington, District of Columbia, to be good in fee simple in complainant by reason of adverse possession thereof for more than twenty years. On motion of the complainant, it is this 2d day of September, A. D. 1908, ordered that the defendants, Samuel Eliot, Junior, Thomas Bulfinch, Harriet A. Deming, Thomas W. Pairo, and Buckner Baylis, if living, or, if any of said defendants be dead, the unknown heirs, allies, and devisees, if any, of those who are dead, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of two months from this date, good cause for fixing such time having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks for the first month, and twice a month for the second and succeeding months thereof in The Washington Law Reporter [Seal] and The Washington Herald. By the Court: WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept 4, 11, 18; oct. 2, 9

**FIFTH INSERTION.**

**J. Harry Smith, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term for Equity Business.**

**Missouri Blackman, Complainant, v. The Unknown Heirs at Law, Devisees, and Allies of Richard Sewell, Deceased.** Equity No. 27,986.

The object of this suit is to declare the title to the south 19 feet fronting on 21st street N. W. and running back equal width the depth of original lot 21, in square 78, in the city of Washington, District of Columbia, to be good of record in complainant, and to perpetually enjoin and restrain the defendants from asserting any title to said real estate. On motion of the complainant, by her solicitor, it is, by the court, this 4th day of August, 1908, ordered that the defendants, the unknown heirs at law, devisees, and allies of Richard Sewell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause shall be proceeded with as in case of default. This order shall be published twice a month in the months of Aug. at September, and October, 1908, in The Washington Law Reporter and The Washington Times. JOBBARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug 7, 14; sept 4, 11; Oct 2, 9

# The Washington Law Reporter

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### Parol Agreement Varying Written Contract After Execution.

In *Baltimore Refrigerating Company v. Wetzel*, recently decided by the United States Circuit Court of Appeals for the Fourth Circuit, the action was to recover the purchase price of machinery sold under a written contract. Evidence was offered by the defendant to show that the machinery failed to comply with a warranty contained in a prior contract between the parties which had been fully executed, the claim of the defendant being that such warranty had been incorporated into the second contract by a parol agreement made after its execution. The trial court excluded the evidence, and its ruling is affirmed by the appellate court, which held that a written contract can not be changed after its execution by a parol agreement unless in exceptional cases and for a valuable consideration.

### Liability of Owner of Automobile for Acts of Chauffeur.

In *Cunningham v. Castle*, decided recently by the appellate division of the Supreme Court of New York (111 N. Y. Supp., 1057), it appeared that the plaintiff was injured by an automobile which at the time of the accident the chauffeur had been granted by the owner permission to use for his own pleasure. In the trial court a judgment was rendered for the plaintiff, but this was

reversed by the appellate court, on the ground that the chauffeur was not engaged in any business of the defendant at the time of the injury, and that the permission given the chauffeur to use the machine made no difference as to defendant's liability.

### Restraining Boycotts.

A recent decision of the Supreme Court of Montana (*Lindsay & Co. v. Montana Federation of Labor*, 96 Pac., 127) holds the distribution of a circular urging all laboring men and persons in sympathy with organized labor to withhold their patronage from the plaintiffs not to be illegal, for the reason that the plaintiffs had no property right in the trade of any particular person. The court said that although decisions exist which make the same act lawful when done by one person unlawful when done by several, on the theory that concerted action amounts to a conspiracy, an individual clothed with a certain right when acting alone does not lose that right merely by acting with others, each of whom has the same right. It was declared that where the means employed by a labor organization in the enforcement of a boycott are legal, the courts can not assist the person boycotted.

### Contempt in Violation of Strike Injunction by Person not Party to Suit.

In *Garrigan v. United States*, decided by the United States Circuit Court of Appeals for the Seventh Circuit (163 Fed., 16), the appeal was from an order of the Circuit Court adjudging the appellant guilty of contempt in the violation of a strike injunction. The court held that where, in such a proceeding, there was neither allegation nor proof of the relation of the respondent to or his privity with either of the persons enjoined prior to or apart from alleged acts in violation of and contempt of such injunction, the proceedings were strictly criminal in their nature, under the rule that a proceeding for civil contempt obtains only for the benefit and enforcement of the rights of the parties to a suit, while proceedings for criminal contempt are to punish for acts in contempt of the power and dignity of the court. As to the persons bound by an injunction, the court said that a person not one of the parties enjoined by a strike injunction, while not strictly chargeable for breach or violation of the injunction in the same sense as those terms are applicable to the parties, is nevertheless bound with other members of the public to observe its restrictions when known, to the extent that he must not aid or abet in its violation by others, nor set the known command of the court at defiance by interference with or obstruction of the known administration of justice, and if he does so the court's power to punish is absolute. It was further held that in a proceeding for criminal contempt in violating a strike injunction, the respondent is entitled to the benefit of the presumption of innocence.

# Court of Appeals of the District of Columbia.

FRIED. KRUPP AKTIENGESSELLSCHAFT,  
APPELLANT,

v.

WILLIAM CROZIER.

PATENTS; INFRINGEMENT BY OFFICER OF UNITED  
STATES; SUIT TO ENJOIN.

Appellant, owner of certain letters patent of the United States for improvements in field guns and gun carriages, brought suit against defendant, chief of ordnance of the United States, to enjoin the infringement by him, his agents and employees, of said letters patent in the manufacture of field guns and carriages for the United States. The defendant demurred on the ground that the suit was in effect against the United States. Held, that assuming the truth of the allegation of infringement, complainant was entitled to an injunction; and a decree sustaining the demurrer reversed.

No. 1877. Decided October 7, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 27,144, dismissing a bill for an injunction. Reversed.

Mr. HARRY G. KIMBALL and Mr. F. D. S. BETHUNE for the appellant.

Mr. STUART McNAMARA for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This appeal brings into review a decree of the Supreme Court of the District dismissing appellant's bill of complaint.

Appellant, a corporation organized under the laws of the German Empire, seeks to enjoin William Crozier, Chief of the Ordnance of the United States Army, his agents and employees, from manufacturing field guns and gun carriages in infringement of certain Letters Patent of the United States regularly issued to Fried. Krupp, of Germany, two on March 17, 1903, and one on May 30, 1905, numbered 722,724, 722,724 and 791,347, respectively, which patents were subsequently assigned to appellant and the assignments duly recorded in the Patent Office of the United States.

It was stipulated below that no pecuniary benefit has accrued to the defendant Crozier by reason of the acts set forth in the bill, and plaintiff waives any claim for accounting or damages. It was further stipulated that the Government of the United States and its ordnance department have manufactured, and intend to continue the manufacture and use, or cause to be manufactured for the use of the Government, field guns and carriages made after the models referred to in the bill ("the claim or claims of complainant being in no wise admitted"); and that the defendant Crozier is the officer in the service of the United States who directs and is in charge of such manufacture of said field guns and carriages for the United States.

To the bill as thus amended by stipulation the defendant demurred, the ground of the demurrer being the contention that the suit is in effect against the United States. This appeal followed the decree of the court sustaining the defendant's demurrer.

That the United States, its officers and agents,

have no right, title, or interest in the patents involved in this suit is not denied. That these patents are the exclusive property of appellant is not denied, and, indeed, could not be in view of *James v. Campbell*, 104 U. S., 356, and *Belknap v. Schild*, 161 U. S., 10. That the Patent Office of the United States issued these patents in pursuance of law and therein purported to grant to the patentee, his heirs and assigns, for a stated period "the exclusive right to make, use, and vend the invention or discovery throughout the United States" is admitted; but, it is contended, in behalf of appellee, that because of this inexcusable encroachment upon the rights of appellant inures to the benefit of the Government the courts are powerless to stay the hands of the wrongdoer. If such be the case, one department of the Government may without warrant or authority, and in direct violation of the rights of third parties nullify the lawful acts of another department of the Government.

We can not believe that in the eyes of the law it is any less obnoxious for an officer of the Government to appropriate property for the benefit of the Government, under the conditions surrounding this case, than it would be to appropriate it for his own personal benefit. Nor do we find anything inconsistent with this proposition in either *Belknap v. Schild*, supra, or *International Postal Supply Co. v. Bruce*, 194 U. S., 601.

In *Belknap v. Schild* it was sought to restrain the Commandant of the United States Navy Yard at Mare Island, California, and certain of his subordinates, from using a caisson gate which had been theretofore installed at that place in violation of plaintiff's patent and also to have said gate destroyed or delivered to plaintiff. In denying the relief sought the court said: "The caisson gate was a part of the dry dock in a navy yard of the United States, was constructed and put in place by the United States, and was the property of the United States, and held and used by the United States for the public benefit. If the gate was made in infringement of the plaintiff's patent, that did not prevent the title in the gate from vesting in the United States. The United States, then, had both the title and the possession of the property. The United States could not hold it or use it, except through officers and agents. Although this suit was not brought against the United States by name, but against their officers and agents only, nevertheless, so far as the bill prayed for an injunction, and for the destruction of the gate in question, the defendants had no individual interest in the controversy; the entire interest adverse to the plaintiff was the interest of the United States in property of which the United States had both the title and the possession; the United States were the real party, against whom alone in fact the relief was asked, and against whom the decree would effectively operate; the plaintiff sought to control the defendants in their official capacity, and in the exercise of their official functions, as representatives and agents of the United States, and thereby to defeat the use by the United States of property owned and used by the United States for the common defense and general welfare; and therefore the United States were an indispensable party to enable the court, according to the rules which govern its procedure, to grant the relief sought; -

and the suit could not be maintained without violating the principles affirmed in the long series of decisions of this court, above cited."

*International Postal Supply Co. v. Bruce* came before the court on a certificate for instruction, from which it appeared that the defendant was postmaster of the United States Postoffice at Syracuse, N. Y., and that his subordinates were using two stamp-cancelling machines which infringed plaintiff's patent, and which had been hired by the United States Postoffice Department for an unexpired term of years. The court held the case to be governed by *Belknap v. Schild*, which, it said, turned on the proposition "that they could not interfere with an object of property unless it had before it the person entitled to the thing." The court further said: "In the case at bar the United States is not the owner of the machines, it is true, but it is a lessee in possession, for a term which has not expired. It has a property, a right in rem., in the machines, which, though less extensive than absolute ownership, has the same incident of a right to use them while it lasts. This right can not be interfered with behind its back and, as it can not be made a party, this suit, like that in *Belknap v. Schild*, must fail. . . . Whether or not a renewal of the lease could be enjoined is not before the court."

It will thus be seen that in the *Belknap* and *Bruce* cases the subject-matter involved was property of the United States, and that, therefore, the United States was necessarily a party. In the present case it is not sought to disturb the United States in the possession and use of the guns already manufactured. The court is not asked to deal with property of the United States. The plaintiff simply asks that an officer of the United States be restrained from invading rights granted by the Government itself. The acts complained of are not only not sanctioned by any law, but are inconsistent with the patent laws of the United States.

That "no man is so high that he is above the law" and beyond the coercive process of the courts has long since been definitely determined. *Osborn v. U. S. Bank*, 9 Wheat., 738; *U. S. v. Lee*, 106 U. S., 196; *Pennoyer v. McConaughy*, 140 U. S., 1; *Tindal v. Wesley*, 167 U. S., 204; *Amer. School of Magnetic Healing v. McAnnulty*, 118 U. S., 94.

We can not see that this case differs in principle from the case last cited, which was a suit against the United States postmaster in charge of the United States postoffice at Nevada, Mo., to restrain him from carrying out the provisions of a so-called "fraud order" issued by the Postmaster-General. It was held that inasmuch as the Postmaster General in issuing the order exceeded his authority the plaintiff was entitled to relief. The court said: "The acts of all its (the Government's) officers must be justified by some law, and in case an official violates the law to the injury of one individual the courts generally have jurisdiction to grant relief."

If an officer, who in good faith is attempting to execute the command of his superiors, a command issued in supposed obedience of express statute, is subject to the injunctive process of the courts, much more ought an officer to be restrained whose only excuse for violating private rights is that he is acting for the benefit of the Government.

Assuming for the purpose of this opinion the truth of the allegation of infringement, it is apparent that unless the relief sought is granted, plaintiff's patents will be valueless in the United States since they are of use to the Government alone.

It follows that the decree must be reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

#### Passes for Advertising Under the Hepburn Law.

[Law Notes.]

In January, 1907, the Chicago, Indianapolis and Louisville Railroad Company entered into a contract with the publishers of *Munsey's Magazine* for \$500 worth of advertising to be paid for in tickets or mileage. The Federal authorities, when they learned of the transaction, brought suit to enjoin the carrying out of the contract, on the ground that it was a violation of the provision in the Hepburn law against the acceptance of any compensation for transportation "greater or less or different from that named in the published rates." The railroad company denied any violation of law and insisted that it received full money value based on the published rates. The United States Circuit Court in the Seventh Circuit, Judge Kohlsaat presiding, has granted the injunction upon the ground that railroad business is required to be based on cash values and can not be turned into a matter of barter or exchange. Said the court:

"It will be noted that the contract does not require that the advertising must have been furnished before the transportation is given. There is no restriction upon the advertiser to call for his railroad tickets only so far as earned. In the mere matter of interest the rate would be less and different from that which is published.

"There is no mistaking the trend of the law-making and constructing powers. Every new step is tending toward a most rigid enforcement of the rule that requires exact equality in the matter of rates. When by the Hepburn act the word 'different' was added to the words 'greater or less,' it is not unfair to assume that Congress intended to make the law more explicit and more difficult to evade. The plain intention is to close every avenue against discrimination. Bearing this in mind, the courts have not been, and will not be, disposed to hesitate in giving significance to changes in the language of the statutes as they occur from time to time.

"It is essential to the spirit of the statute that the value of transportation be fixed and certain. In no other way can it be held to be exactly the same to all. If one person may purchase it with advertising, another with labor, and another with produce, the value of which is a matter of agreement between the parties, how can it be said the schedule rate is always maintained? Would not the rate rest in the whim of the carrier? Such is not the intent of the law. To say to one man, 'You must pay cash,' and to his competitor, 'You must pay in services or merchandise at prices we may agree upon,' be it less or more than the market prices, would seem clearly to constitute such a difference in transportation as is condemned by the act."

## New Books.

**PRAYERS AND INSTRUCTIONS. With Forms.** By Armstrong Thomas, of the Baltimore Bar. Baltimore: The Lord Baltimore Press. 539 pp.

The above work deals with a subject of practical interest to members of the bar. It discusses the right of parties to have the jury instructed and the duty and power of the court in reference to instructions in both criminal and civil cases; right of the parties to have the court rule on the law when sitting as court and jury; questions upon which instructions may be asked; time for offering prayers and giving instructions; requisites of correct prayers and instructions; conceded instructions; exceptions to instructions and rulings on prayers, and bills of exception. Forms of prayers are given appropriate in actions involving questions of adverse possession, agency, animals, assault and battery, assumpsit, bills and notes, brokers, carriers, contracts, criminal cases, damages, death by wrongful act or default, deceit, drainage—water and water courses, ejectment, eminent domain, evidence, false arrest and imprisonment, insurance (fire, life and accident), landlord and tenant, libel, malicious prosecution, master and servant, negligence, nuisance, replevin, sales, slander, trespass, trover, and wills. The final chapter, under the heading "Miscellaneous Forms," gives forms for instructions in a great variety of cases. The forms given have all been approved either by the Court of Appeals of Maryland, the courts of the District of Columbia, or the Supreme Court of the United States. This resume of its contents is sufficient to indicate the value of the work to lawyers generally and particularly to those engaged in practice before the courts of this District.

**GREAT AMERICAN LAWYERS.** Edited by William Draper Lewis, Dean of the Law Department of the University of Pennsylvania, Philadelphia. The John C. Winston Company. Complete in eight volumes

One of the most interesting and attractive publications of the year is an eight volume work entitled "Great American Lawyers," dealing with the lives and influence of judges and lawyers who have acquired permanent national reputation and have developed the jurisprudence of the United States. It is in fact a history of the legal profession in America, and will prove for the profession in this country what Lord Campbell's "Lives of the Lord Chancellors and Lord Chief Justices" have been for England. The work is not a mere collection of biographical sketches, though perhaps no class of literature can be read with more of profit than biography. These monographs are, however, biographies and more. Each tells of some great American judge or lawyer of the past, in such a way that taken collectively they give a history of the development of our legal institutions and an insight into the social and political conditions existing in different parts of the country at practically every period of our national life.

The publishers were most happy in their choice of an editor. Professor Lewis is widely known to the profession, and his scholarly attainments eminently fit him for the duty assigned him. The selection of ninety-six names from the number of great judges and lawyers who have made their impress on our national life is a difficult task. Such a list to be intelligently selected must repre-

sent definite aims; and the editor has aimed to include: First, those judges and lawyers who as such, have acquired permanent national reputation; second, those who have, because of their ability and judicial or professional opportunities, permanently impressed themselves on the jurisprudence of their respective States; third, those who have through their teachings or by their writings produced, either a distinct effect on the law, or have been instrumental in stimulating new methods of legal education and research.

The editor has had the assistance of a number of the most noted legal writers, and unitedly they have produced a work that will be welcomed by the profession. It has received high commendation from many eminent judges and lawyers.

**THE LAW OF THE FEDERAL AND STATE CONSTITUTIONS OF THE UNITED STATES.** With an Historical Study of their principles, a Chronological Table of English Social Legislation, and a Comparative Digest of the Constitutions of the Forty-six States. By Frederic Jesup Stimson, Professor of Comparative Legislation in Harvard University. Boston: The Boston Book Company. 886 pp.

This work, prepared primarily for use of the author's classes in comparative legislation in Harvard University, will be read with interest by students of politics, whether lawyers or laymen. What has been principally sought is, as stated by the author in the preface, "to give the history, origin and present tendency of American constitutions, both Federal and State," and the bulk of the work is made up of a careful comparative presentation of the constitutions of the forty-six States, annotated with corresponding provisions of the Federal Constitution, with voluminous footnotes. The work is divided into three parts or books, the first dealing with the origin and growth of the American constitutions. The second deals with constitutional principles as expressed in the English statutes of the realm and American constitutions, the first chapter treating of constitutional principles protecting personal liberties and private rights as expressed in constitutional documents, from Magna Charta to the United States constitutions, the second chapter giving a comparative digest of English social legislation, and the third chapter treating of the division of national and State power; while, in the third book, the various State constitutions are digested, annotated, and compared with the Federal Constitution.

The author, Mr. Stimson, is widely and favorably known as a writer on legal subjects, and students of constitutional law will find the present work one of great value and interest.

**TREATISE ON THE LAW GOVERNING INDICTMENTS. With Forms.** By Howard C. Joyce. Albany, N. Y.: Matthew Bender & Co. 1008 pp.

The purpose of the author of this work has been to present the general principles as to the finding, requisites, and sufficiency of indictments, with their application to indictments for specific offenses, and also to give forms for which there is frequent need. To accomplish this purpose has required a vast amount of labor on his part in the examination and citation of thousands of cases. The work will be found of practical value to the profession, especially to those having to do with the criminal branch of the law. The principles of law are clearly stated, and the forms given are, with few exceptions, those which have either re-

ceived judicial approval in cases in which the question of their sufficiency has been before the court for determination, or those which have been used in cases in which the question of their sufficiency has not arisen, thus leaving the pleader in no uncertainty as to whether he may with safety follow a certain form. These forms cover 283 pages of the text and embrace a great variety of cases.

#### Evidence; Parol; To Show Condition.

In *Beach v. Nevins*, in the United States Circuit Court of Appeals, Third Circuit (June, 1908, 162 Fed., 129), it was held that in an action on a promissory note evidence was admissible on the part of defendant that the note was delivered to the plaintiff upon an oral agreement that it should not become operative, but should be returned on the same day, unless plaintiff should secure and deliver to defendant certain stock of a corporation for which it was to be in payment, and that the stock was not so delivered. Such evidence did not tend to contradict or vary the note, but to show that its delivery was conditional, and that it never became an operative instrument.

#### The "Crime Passionnel."

[London Law Journal.]

The differences between the French and English attitude towards law are illustrated not less in criminal than in civil jurisprudence. The French people allow a place to sentiment in the treatment of crime which is almost shocking to our sober sense, and no doubt our inflexible administration of broad principles of justice sometimes offends their sentimental nature. Here the rule of law is paramount; there it is always liable to be overruled by political considerations or popular feeling. A most striking example of this tendency is furnished by the acquittal of Grégori, the cowardly assailant of Colonel Dreyfus, who pleaded to a charge of premeditated wounding that the act was purely passionate, and therefore, he maintained, excusable. Our law, happily, knows no such excuse. Malice, the mens rea, is, it is true, of the essence of crime; but that does not mean malice in the sense of malevolence. Lawyers are not misled by the moral significance of the word as denoting ill-will. That would be to confound motive with criminal intent. Bentham, in his "Theory of Punishment," pointed out long ago that depravity is not a necessary element in crime, and it is odd that the French, with their logical minds, should be led astray from the main consideration—the protection of society—by the introduction of other and less worthy considerations. To our mind that uncontrollable passion which menaces the life and property of others is just the evil which the criminal law has to prevent. The greater the inclination to it, the more severely it has to be repressed. A very small proportion of crime is the outcome of cold-blooded villainy. For the security of society the malicious act has to be punished equally, whether it be the result of passion or of other vicious inclination. As the President of the French Court pointed out in the Grégori case, passion may be said to animate the woman who throws vitriol at her rival, and yet in any sound system of law that would be no excuse for the crime. But it is significant that in Paris

last week a jury held that a woman who had done this deed should have the benefit of extenuating circumstances. It has been urged of late that our law of homicide requires reform by way of instituting degrees in murder cases. It is certain, however, that whatever else may be done, any reform which may be introduced will not allow passion to become an extenuation of crime. For it is, after all, passion, in one or other of its hydra-headed forms, which is the prime cause of crime, and to condone it is to encourage the very evil which it is the object of law to prevent.

#### Wager of Battle in the Year-books.

[London Law Journal.]

The new volume of Year-books (20 Edward III), edited by Mr. Owen Pike, contains a curious account of the manner of joining the wager of battle on a writ of Right. The matter in controversy was ten acres of meadow-land. The tenant in possession—A—meets the claim with a precise point-blank denial, and says he will deny it "by the body of his freeman, one H, by name, who is here ready to deny it by his body or in whatsoever way the court shall adjudge." "And A's champion was bareheaded and with his sleeves unfastened, and his sleeves were turned up on his arms, and he had in his right hand a glove folded, and in each finger of the glove there was one penny, and he proffered the glove to the court," but he did not throw it into the court until the other party had joined the wager of battle. The claimant's champion in due course threw forward a glove folded, and then the tenant's champion threw forward *his* glove, and the court accepted both, taking pledges of claimant and tenant that they would carry out the battle, and that neither of the champions should injure or molest the other either secretly or openly, which pledges they gave. Then the gloves were redelivered to the champions, and the parties were told that they must pay strict attention to the champions, and keep their day (of battle) on the morrow of All Souls. The explanation of the five pennies in each glove was a religious one. They were to be afterwards offered in honor of the Saviour's five wounds, so that God might allow the victory to be given to the champion who had right on his side. It is this appeal to Heaven to defend the right in the wager of battle which saves its character as a judicial proceeding. It is really the old ordeal adapted to a martial age—not fire or water the test, but arms. There is another, somewhat amusing, case in the same volume illustrating the wager of battle. A citizen of London appealed one of robbery. The appellee denied the charge, and offered to deraign or prove his denial by his body. Then the citizen of London seems to have thought better of it, and pleaded the privilege of the citizens of London never to have battle waged against any one of them in relation to a felony. The appellee insisted that the appellor had gone too far to go back, and claimed judgment of battle. Thereupon the citizen made an adroit move in the game by getting the citizens of London to intervene and urge that he could not give away their privilege. What the upshot was does not appear, but the story irresistibly suggests Mr. Winkle and his appeals to Mr. Snodgrass on the eve of his duel—the wager of battle translated to the Victorian era.



**Prescription; Interruption of User.****[New York Law Journal.]**

In *Dummer v. United States Gypsum Co.*, in the Supreme Court of Michigan (July, 1908, 117 N. W., 317), a question as to the acquirement of an easement by prescription was passed upon which is of general interest. The report of the case is very long, the charge of the trial judge to the jury being extensively quoted. The plaintiff had no record title to the easement claimed, and it was held that the trial judge had rightly ruled that an alleged oral agreement at the beginning of the use of the servient estate would be "such an agreement as the statutes of this State required to be in writing and as an agreement would be void."

As to the contention of acquirement of the easement by prescription it was properly held, citing many authorities that the "continuous" and "uninterrupted" user which is essential is not necessarily a constant user. It appeared, however, that from some time in 1886 until 1891, a period of substantially five years, the mills owned by the plaintiff were not in operation, and no use was made of the easement claimed to be appurtenant to the land upon which the mills were situated, the reason for such cessation being that "the owners of the mills thought it more profitable to enter into a pooling arrangement and stop their mills for a series of years, instead of running them, thereby making it unnecessary to use the easement." Notwithstanding this circumstance, the trial judge deemed the question of "continuous" and "uninterrupted" user a proper one for the jury. The Supreme Court of Michigan decides that such view was erroneous, and, while recognizing a very wide latitude of occasional intermission of user if the circumstances show that it was unnecessary or inconvenient to use the easement daily or weekly, states the gist of its decision in the following language:

"Without quoting further from the authorities cited by plaintiff, we may say of them that none of them stands for the proposition that the user of the easement may put himself in a position where he has no occasion to use the easement and then say that 'the sole test is whether the right of way was used whenever desired during the requisite period of years.'"

Accordingly it was held that a verdict should have been directed in favor of defendant. The authorities cited are not only from Michigan, but from several other jurisdictions. Among the many judicial utterances quoted, the following, by the Supreme Court of California in *Hesperia Land & Water Co. v. Rogers* (83 Cal., 10), satisfactorily illustrates the general rule of law:

"The correct rule as to continuity of user to give a presumptive right to an easement, and what shall constitute such continuity, can be stated only with reference to the nature and character of the right claimed. The right is not abandoned to the use of a ditch to convey water for purposes of irrigation because water does not flow in it every day in the year. The party claimant does not need the ditch every day in the year, and the law does not require him, to constitute continuity of use, to use the water when he does not need it. If he has used the ditch at such times as he needed it, it is regarded by the law as a continuous use. If a right of way over another's land has been used for more than five years it is

not necessary, to make good use, that the claimant has used it every day. He uses it every day, or once in every week, or twice a month, as his needs require. He is not required to go over it when he does not need it to make his use of the way continuous. The claimant is required to make such reasonable use of the way as his needs require. So it is of the ditch. If, whenever the claimant needs it from time to time, he makes use of it, this is a continuous use. An omission to use when not needed does not disprove a continuity of use shown by using it when needed. *Bodfish v. Bodfish*, 105 Mass., 319. Neither such intermission nor omission breaks the continuity."

**Food; Liabilities for Injuries; Manufacturer; Scientist.****[Albany Law Journal.]**

In *Tomlinson v. Armour & Co.*, in the Court of Errors and Appeals of New Jersey (June, 1908, 70 Atl., 314), the following is from the syllabus by the court:

"A declaration setting forth that defendant was engaged in the business of putting up in tin cans or vessels, and vending, meats for food and domestic use, and did put up a certain can of ham for food and domestic use, which was sold by the defendant to a retail dealer, to be sold to customers and patrons; that plaintiff purchased said can of ham from said retailer for food and domestic use; that the defendant negligently put up in said can of ham diseased, unfit and unwholesome ham, which was deleterious and poisonous to the human body and health; and that the plaintiff, without fault or negligence on her part, ate a piece of ham taken from said can, and in consequence thereof became poisoned and sick with ptomaine poison—held to set forth a good cause of action, notwithstanding the absence of scienter.

"Irrespective of the presence or absence of contractual obligations arising out of the dealings between manufacturer and retailer, and between retailer and consumer, the manufacturer of canned goods is under a duty to him who, in the ordinary course of trade, becomes the ultimate consumer, to exercise care that the goods which he puts into cans and sells to retail dealers, to the end that such dealers may sell the same to customers and patrons as food, are wholesome and fit for food, and not tainted with poison."

The court said in part:

"The leading American case is *Thomas v. Winchester* (1852, 6 N. Y., 397, 57 Am. Dec., 455). This is a well considered case, and holds that a dealer in drugs and medicines who carelessly labels a deadly poison as a harmless medicine, and sends it so labeled into market, is liable to all persons who, without fault on their part, are injured by using it as such medicine in consequence of the false label; that such liability arises, not out of any contract or privity between the dealer and the person injured, but out of the duty which the law imposes upon the former to avoid acts in their nature dangerous to the lives of others. This decision has been cited with approval by our Supreme Court as a typical instance of the duty imposed, on public grounds, upon any person who undertakes the performance of an act which, if not done with care and skill, will be dangerous to the persons or lives of others, the duty being to

exercise such care and skill. *Van Winkle v. Am. Steam Boiler Co.*, 52 N. J. Law, 240, 247, 19 Atl., 472. And this court has already approved *Thomas v. Winchester* to the extent that it held the chain of causation was not broken by the innocent acts of the intervening parties who, in reliance upon the label, bought and sold the poison until it came to her who finally used it. *Del., Lack. & Western R. R. v. Salmon*, 39 N. J. Law, 299, 310, 23 Am. Rep., 214. The doctrine of *Thomas v. Winchester* has been recognized and approved in *Massachusetts*. See *Norton v. Sewall*, 106 Mass., 143, 144, 8 Am. Rep., 298. And in *Bishop v. Weber* (1885, 139 Mass., 411, 1 N. E., 154, 52 Am. Rep., 715), an action of tort was sustained against a caterer for improperly and negligently furnishing unwholesome and poisonous food. *Allen, J.*, said:

"This liability does not rest so much upon an implied contract as upon a violated or neglected duty voluntarily assumed. Indeed, where the guests are entertained without pay, it would be hard to establish an implied contract with each individual. The duty, however, arises from the relation of the caterer to the guests. The latter have a right to assume that he will furnish for their consumption provisions which are not unwholesome and injurious through any neglect on his part. The furnishing of provisions which endanger human life or health stands upon the same ground as the administering of improper medicines, from which a liability springs irrespective of any question of privity of contract between the parties." In *Blood Balm Co. v. Cooper* (1889, 83 Ga., 457, 10 S. E., 118, 5 L. R. A., 612, 20 Am. St. Rep., 324), it was held, upon the authority of *Thomas v. Winchester*, that the proprietor of a patent medicine, who puts upon the bottle containing it a prescription that it is to be taken in certain quantities, and sells it to a druggist for resale to any who may wish it, is liable for any injury sustained, on account of its poisonous effect, by one who buys it of the druggist, and uses it according to the prescription."

#### Damages for Miscarriage.

[New York Law Journal.]

In *Morris v. St. Paul City Ry.*, in the Supreme Court of Minnesota (August, 1908, 117 N. W., 500), it was held that "when an injury to a woman results in a miscarriage she is entitled to recover such damages as will fairly compensate her for the pain and suffering occasioned by the miscarriage, but not for the pain and suffering occasioned by the loss of the child." This extract from the syllabus by the court, in our judgment, states rules upon the subject approved by the better considered cases. In *Jones v. Brooklyn Heights R. R.* (23 A. D., 141), it was held by the Second Appellate Division of the New York Supreme Court that "while mere fright, disassociated from physical injury, is not actionable, yet when it is associated with actual injury, and the fright and injury concur and result in producing shock out of which damage arises, there exists a sufficient basis for recovery." In that case recovery was allowed for a miscarriage caused through defendant's negligence.

A special interest attaches to the Minnesota decision for the reason that it is further held that "the pain and suffering which the mother would have suffered when the child was born in the

natural course of events can not be deducted from the pain and suffering occasioned by the miscarriage, which resulted from the defendant's negligence" (syllabus by the court). The ruling on this point was made because counsel cited and relied upon the following language from *Joyce on Damages* (vol. 1, sec. 185):

"In those cases where a negligent act results in a miscarriage the general rule seems to be that damages therefor are recoverable. But in such cases it would seem that though damages may be recovered for a physical injury or negligent act independent of any miscarriage, yet if miscarriage results from such act or injury, in order to authorize a recovery for the latter, it should appear that there was an increased or aggregated mental or physical pain or distress in connection with such miscarriage in addition to what the mother would have suffered if the child had been born at the proper time, or that her health had been impaired thereby. In the absence of any such evidence there would seem to be but little basis for the awarding of damages for a miscarriage."

The Minnesota court states that the point as to increased pain or distress is not supported by the citation of any authority. It is, moreover, a little singular that the language quoted from the text-writer is part of a paragraph which argues against the allowance of damages resulting in the loss of prospective offspring, because such an element would be too uncertain and speculative. The degree and duration of suffering which any woman might eventually undergo in giving birth to a child is entirely a matter of conjecture.

It would seem that the Supreme Court of Minnesota is correct in the view that the miscarriage must be regarded as a fact independent of the possible or probable future of the plaintiff's pregnancy, and damages allowed upon that basis. In the following language from the opinion certain authorities touching the subject are discussed and the court states the grounds for its position:

*Western Union Tel. Co. v. Cooper* (71 Tex., 507, 9 S. W., 598, 1 L. R. A., 728, 10 Am. St. Rep., 772), and *Bovee v. Town of Danville* (53 Vt., 183), cited by counsel for appellant, do not hold that a woman who has suffered a miscarriage can recover damages only for the difference in pain and suffering between what she actually suffered and what she probably would have suffered at some time in the future. The *Cooper* case was an action against the telegraph company to recover damages alleged to have been caused by the negligent failure to deliver a message summoning a physician to attend a woman in confinement. It was held that there could be a recovery for the increased pain and suffering which resulted to the woman from the absence of the physician. Manifestly no other rule could apply in such a case. The failure to deliver the message and the resulting absence of a physician operated upon an existing condition and thereby increased the pain and suffering. The *Bovee* case was an action against the town for damages caused by a defective highway, which resulted in injury to Mrs. Bovee and the premature birth of twin children. We find nothing in the case which sustains the appellant's position. It was held that the plaintiff could not recover for the loss of her offspring, as the grief therefor "involves too much the element of sentiment to be left to the conjectures and caprice of a jury. If, like Rachel, 'she

wept for her children and would not be comforted,' a question of continuing damages is presented too delicate to be weighed by any scales which the law has yet invented."

It was held that "the plaintiff was entitled to recover all damages which were naturally and legitimately consequent on the negligence of the town. If the violence done her person resulted in a miscarriage, the miscarriage was a legitimate result of such negligence. Any physical or mental suffering attending the miscarriage is a part of it, and a proper subject of compensation. But the rule goes no farther. Any injured feelings following the miscarriage, not part of the pain naturally attending it, are too remote to be considered an element of damages." In *Berger v. Railway Co.* (95 Minn., 84, 103 N. W., 724) the reference to *Joyce on Damages* is in general terms and in connection with the statement that the damages awarded in that case were properly confined to the personal injuries of the mother, and that there was no attempt to recover for the mental anguish caused by the loss of the child. The court did not intend to affirm the doctrine, advanced by *Joyce*, that the jury should subtract from the pain and suffering the mother sustained by reason of the miscarriage the pains of childbirth which she was due to suffer at the end of her period of pregnancy. At the time of this accident Mrs. Morris was pregnant, but she was in a natural and normal condition of health. The miscarriage resulted from the negligent act of the appellant, and it should be required to pay the damages which resulted naturally and directly from its negligent acts. The fact that Mrs. Morris would, in the natural course of events, suffer more or less pain and anguish at the birth of her child, can not be properly taken into consideration. It is too remote, speculative, and uncertain to be taken as a basis for estimating damages. Her possible future suffering has no connection whatever with the suffering which resulted from the negligent act of the appellant.

#### Savings Banks; Payment on Forged Order.

In *Hough Ave. Savings & Banking Co. v. Anderson*, in the Supreme Court of Ohio (June, 1908, 85 N. E., 498), the following is the syllabus by the court:

"By-laws of a savings bank, which require the presentation of the deposit book, or due notice to the bank in case of the loss of the book, as conditions precedent to payment to the depositor, or upon his written order, are reasonable conditions and become a part of the contract between the bank and the depositor when brought to the notice of the latter.

"When in such case the bank makes payment on presentation of the deposit book or pass book, not to the depositor in person, but upon what purports to be a written order by him and which turns out to be a forgery, the bank is at least bound to act in good faith and to exercise reasonable care with the view to avoid payment to a person who is not lawfully entitled to receive payment; and, if in such case it does not so act in good faith and exercise reasonable care, it will be liable to pay again to the rightful owner of the deposit."

The opinion concludes with this language:

"The authorities cited by counsel for plaintiff

in error are not applicable to the present case, because all of them, as we read them, are cases in which the bank was not negligent; and one of them, *Schoenwald v. Metropolitan Savings Bank*, 57 N. Y., 418, has been distinguished several times, and so limited to the facts of that case that it can not be regarded as of much value as an authority. *Allen v. Williamsburg Sav. Bank*, 69 N. Y., 314; *Smith v. Brooklyn Sav. Bank*, 101 N. Y., 58, 4 N. E., 123, 54 Am. Rep., 653; *Kummel v. Germania Sav. Bank*, 127 N. Y., 488, 28 N. E., 398, 13 L. R. A., 786."

#### Liability of "Fourth Parties" for Interference with Contractual Relations.

[Central Law Journal.]

We have had occasion recently to refer to the gradual extension of the rule at common law making it actionable to entice one's servant away into a general doctrine whereby any unlawful and injurious interference with contractual relations, whether malicious or not, is actionable.

Lawyers are just beginning to appreciate the wonderful possibilities of this new rule. In 67 Cent. L. J., 201, we called attention to the recent case of *Knickerbocker Ice Co. v. Gardiner Dairy Co.*, which held it to be actionable for A to interfere with C's contract with B by refusing to sell to B if B continued to sell to C. In our note to that case we cited several authorities and called attention to the almost illimitable application of this new doctrine which it would profit attorneys to carefully study.

We here desire to refer to another recent case which serves to illustrate the wide application of this principle to all contracts, and to every character of unlawful, injurious interference therewith. We refer to the case of *Motley, Green & Co. v. Detroit Steel and Spring Co.*, 161 Fed., 389. In this case the plaintiffs charged that they had a beneficial contract with the Detroit Steel and Spring Company, whereby they had the exclusive right under contract to sell defendant's springs in a certain territory at certain prices which permitted them to earn a large profit. Later, the plaintiffs charge, the defendant organized The Railway Steel Spring Company, also a defendant in this case, and procured from the latter an offer to purchase all the stock and patents of the Detroit Company, by which transaction, when it was consummated, the Detroit Company was compelled to break its contract with the plaintiffs.

The plaintiffs sued both companies in tort for procuring a breach of their contract with the Detroit Company and asked for \$100,000 damages. The defendants claimed that the Railway Spring Company was in no sense liable to plaintiffs, there being no priority of contract between them, but that the only right of action for any damages, if there were any, to plaintiffs was against the Detroit Company for breach of its contract with the plaintiffs.

Here, then, is the supreme issue in this class of cases. Is a party injured by outside interference with his contract relations confined to his action for breach of contract, or may he sue in tort and recover damages, actual and punitive, against the intermeddlers? The authorities are all now agreed that the party so injured has his choice of actions. Moreover, the court in the

principal case holds that if a fourth party should aid such third party in procuring such breach of contract he, too, is liable in tort. That was the rule on which the Detroit Company was held liable in tort, and not for breach of contract. For the petition alleged that the Detroit Company procured the Railway Spring Company to organize and to make the pretended purchase from the Detroit Company in order to nullify plaintiff's contract.

On the question of the liability of "fourth parties" the court said: "It is unnecessary to say that if is an actionable wrong for a third party to maliciously interfere in a contract between two parties and induce one of them to break that contract to the injury of the other, then it is an actionable wrong for a fourth party to conspire with and aid and assist such third party in perpetrating the wrong. In such case the conspiring parties would both be liable as joint wrongdoers. Now, if one of the contracting parties devises a scheme to avoid his contract and escape performance and, perhaps, liability by combining and confederating with a third person to pretend to transfer to him his property and the business to which the contract relates, making known to such third person his contract obligations and his object and purpose, such third person to pretend to be the owner and to have the possession of and the management of the business and refuse to give employment or business to the other contracting party, pursuant to the contract, and deprive him of gains, profits and advantages already partially earned, and prevent his full performance so as to deprive him of what he is entitled to, and such third party enters into and becomes a party to the scheme, and for a consideration aids to carry it into full effect to the damage of the other party to the contract, can it be said that here is not a conspiracy to commit a wrong by deception and wrongful acts; and that it has been consummated by the joint action of both parties? If so, and the third party is liable for the wrong, why are not both parties liable? Can the contracting party escape by saying: 'I have broken my contract, true, and your only remedy is an action for the breach of the contract?' Can the third party escape by saying: 'All I have done is to aid one of the parties in violating his contract—a thing he might have done in any event—and the sole remedy of the injured party is an action in damages for breach of the contract against the party violating same?' This sophistry in this class of cases has been repudiated by the Supreme Court of the United States, and by the courts of many of the States, and by those of England.

The interesting point in this case is the question of the liability of the "fourth party." In this particular instance the "fourth party" was the contracting party himself. His action in getting a third party to interfere with his contract with the plaintiff was in the nature of conspiracy, and it was certainly a deliberate attempt to break his own contract. It is often more important, however, in such case to be able to sue in tort rather than on a breach of contract, and the court in the principal case has the following to say why the Detroit Company should be held liable in tort as well as for breach of contract: "If it be an actionable wrong for a third person to interfere in a contract and induce one of the parties thereto to break it, to the injury of the other, can it be said it is not equally a wrong for one of the parties

to the contract to invite a third party to unite with him and aid him in breaking the contract in such a way as possibly to escape liability in an action for nonperformance, and, gaining his consent, to act together in consummating their agreement? There are many refinements in the law, necessarily so, but courts should be as astute in applying well-known principles of justice to remedy wrongs as the wrongdoers are in devising schemes to perpetrate them."

**Benevolent Society; Nonpayment of Assessment.**  
[Insurance Law Journal.]

In the case of *Supreme Lodge Knights of Honor v. Hahn*, decided by the Appellate Court of Indiana, May 26, 1908, the member of a lodge, after paying assessments to the local lodge for several years was suspended for nonpayment of assessments due, and shortly afterward reinstated unconditionally on his application. He again failed to pay assessments due shortly after and was again suspended, and payments afterward tendered were refused until he should be reinstated, which he refused and neglected to apply for. The subordinate lodge had been accustomed to advance his dues to the supreme lodge and accept payment from him after they were due. It was held that the lodge could not sue to collect assessments, but must rely on suspension or expulsion for its protection, and that the previous course of the lodge did not affect the validity of its action in suspending him.

**Delivery of Policy; Payment of Premium.**  
[Insurance Law Journal.]

In the case of *New York Life Insurance Company v. Greenlee*, decided by the Appellate Court of Indiana, June 10, 1908, the facts as stated by the court were as follows:

"About June 30, 1904, at the solicitation of George Rippey, an agent at Marion, Ind., Robert S. Greenlee made application for life insurance in appellant company. At that time Robert S. Greenlee turned to his son Robert R. Greenlee, the appellee herein, and said: 'I'll take out a policy, if you will keep up the premium.' This was agreed to, and Robert S. Greenlee paid the agent \$5; Robert R. Greenlee taking a receipt therefor and afterward repaying Robert S. Greenlee that amount. Robert S. Greenlee 'went up and was examined himself.' About August 19, 1904, Rippey informed Robert S. and Robert R. Greenlee that the policy had come. The first premium amounted to \$75. Appellee was unable to pay this amount when demanded by Rippey, the agent, but did pay him \$35, and take a receipt therefor, Rippey telling him he could have the policy any time after September 1st. On October 22d inquiry at the Marion office of the appellant company regarding the policy revealed the fact that the agent Rippey had absconded, and appellee was informed that he would be loser with the rest, and no policy was ever delivered to him. Demand for the return of the money paid as premium was made, but none was returned or tendered until after the death of Robert S. Greenlee, on November 2, 1904."

It was held that where the policy was executed in conformity with the application not requiring prepayment of premium, and was sent to the

agent for delivery, its receipt by the agent was substantially a delivery to the insured, for whom he held it as a trustee.

Held, that an agent authorized to deliver a policy and collect the premium waives complete payment by accepting a part of the premium.

Held, that a father may insure his life in favor of his son.

**Shipping; Carriage of Passengers; Liability for Injury; Defective Vessel.**

In *North Coast Lighterage Co. v. Greenwood*, in the United States Circuit Court of Appeals, Ninth Circuit (May, 1908, 162 Fed., 25), it appeared that defendant corporation advertised to carry passengers from Nome, Alaska, to points down the coast in the early spring, and undertook to transport them in a gasoline launch. The boat was not heated, was insufficiently supplied with provisions, and the feed pipes were in such leaky condition that the engine froze up and the boat drifted out to sea and was caught in the ice, resulting in serious suffering and injury to the passengers during four or five days before they were landed.

The action being for damages for personal injuries, it was held that the defendant was liable as a common carrier.

**Bills and Notes; Actions; Defenses.**

In *Reeves & Co. v. Deets*, in the Supreme Court of Nebraska (June, 1908, 117 N. W., 99), the following is the syllabus by the court:

"In a suit on the promissory notes of the defendants the defense was made that the notes were given for machinery sold under a warranty that had failed, and that a controversy thereon arose, in settlement of which the defendants agreed to pay certain of the notes and the plaintiff agreed to repair the machinery and make it conform to the warranty. When the plaintiff offered to repair the machinery defendants refused the offer on the ground that the repairs proposed would be ineffectual, but on the trial they were allowed to show as a reason for refusing the repairs that the offer came too late in the season. Held that the court erred in allowing the defendants to show another and a different reason for refusing repairs than that made to the plaintiff when the offer to repair was made and before suit was commenced."

**Surety Company; Mortgage; Subrogation.**

In the case of *Alexander v. The Fidelity & Deposit Company*, decided by the Maryland Court of Appeals, it appeared that the company was surety upon the bond of the executor of one Pearce. The executor having devastated the estate, the company was compelled to settle with the devisees and claimed subrogation to whatever assets of the estate remained, among which was a mortgage that had been assigned by the executor to Alexander without the authority of the court. The Court of Appeals held that the company was entitled to be subrogated and entitled to the amount of the mortgage; that Alexander took no title by the assignment, and that the executor had no power without the authority of a court of competent jurisdiction to convey to third persons the assets in his hands.

**Fraud.**—An action for deceit, for inducing the consolidation of two corporations by false representations as to the financial condition of one of them, is held in *Pigott v. Graham* (Wash.), 93 Pac., 435, 14 L. R. A. (N. S.), 1176, not to lie, no fiduciary relation existing between the parties, where there was no concealment of anything, and the person injured was competent and able to have investigated, and was not kept from doing so, and it does not appear that an examination was in fact made.

One contracting to buy land is held, in *Selby v. Matson* (Iowa), 114 N. W., 609, 14 L. R. A. (N. S.), 1210, to be entitled to rely upon representations of the seller as to what parcels make up the tract, unless informed or put on inquiry to the contrary.

An action for fraud and deceit is held, in *Sears v. Wegner*, 150 Mich., 388, 114 N. W., 224, 14 L. R. A. (N. S.), 819, to lie against one who fraudulently induces a woman to enter into a void marriage relation with him, by assurances that an existing marriage into which he has entered with another is void.

**Insurance.**—Inability of the reinsured, by reason of insolvency, to pay a fire loss in full or in part, is held, in *Allemania F. Ins. Co. v. Firemen's Ins. Co.*, 28 App. D. C., 330, 14 L. R. A. (N. S.), 1049, not to affect the liability of the reinsurer under the contract of reinsurance, even though it provides that the reinsurer shall in no event be liable for an amount in excess of the ratable proportion of the sum "actually paid."

Beneficiaries of a life-insurance contract are held, in *Slocum v. Northwestern Nat. L. Ins. Co.* (Wis.), 115 N. W., 796, 14 L. R. A. (N. S.), 1110, to have, upon the repudiation of the policy by the company, no such interest in it as to enable them to recover the premiums paid, or the damages, where the law recognizes the right of the insured to dispose of the policy by assignment, will, or gift without their consent.

**Arbitration.**—A stipulation in an arbitration agreement in a pending action by which defendant binds his legal representatives to abide by the award is held, in *Brown v. Fletcher*, 146 Mich., 401, 109 N. W., 686, 15 L. R. A. (N. S.), 632, not to empower the court, upon his death, to revive the action against his legal representatives so as to bind his executors and estate in another jurisdiction.

**Bailments.**—The liability of a third person for the loss of a horse which he is knowingly using for a purpose not contemplated in a contract of bailment is held, in *Palmer v. Mayo*, 80 Conn., 353, 60 Atl., 369, 15 L. R. A. (N. S.), 428, not to be affected by the fact that the loss is due to an inevitable accident.

**Banks.**—A bank which collects checks cashed by it on forged endorsements is held, in *Tibby Bros. Glass Co. v. Farmers' & M. Bank*, 220 Pa., 1, 69 Atl., 280, 15 L. R. A. (N. S.), 519, not to be liable for money had and received for the use of the payee, where the rule is that no contractual relation exists between the payee and drawee of an unaccepted check; and the fact that the payee credits the drawers with the amount of the checks is held to be immaterial.

**Parol Testimony as to Motive; Replevin.**

In *Comeau v. Hurley*, in the Supreme Court of South Dakota (July, 1908, 117 N. W., 371), it was held that a contract or transaction attacked on the ground of fraud or deceit, though evidenced by a written instrument, may be affected by parol testimony of the parties as to the motive prompting their action, and the preceding or accompanying facts and circumstances may be fully stated and explained.

It was decided that in replevin involving cattle seized by defendants under execution as belonging to plaintiff's father, plaintiff could show conversations occurring many years previously between the father and his infant sons, including plaintiff, respecting their working a farm and buying cattle through him on their own account, though the conversations did not occur in defendants' presence, where defendants relied on an intent to defraud the father's creditors by transactions between him and his sons respecting the cattle.

**Negligence; Telephone Pole; Stranger.**

The Supreme Court of North Carolina held, in the case of *Harton v. Forest City Telephone Company*, that a telephone company which negligently maintained a pole in a dangerous condition until it fell across a highway was not liable for the death of a passer-by in consequence of a stranger's setting the pole back in its place and so insecurely propping it up that it fell again in less than an hour, on the ground that the stranger's negligence was the proximate cause of the injury.

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On Patent Law.  
ALDIS B. BROWNE, LL. D.,  
On Jurisprudence Practice of United States Courts, and Mining and Land Law.  
WILLIAM C. WOODWARD, M. D., LL. M.,  
On Medical Jurisprudence.  
GEORGE E. HAMILTON, LL. D.,  
On Legal Ethics.  
HON. D. W. BAKER, A. M., LL. M.,  
(United States Attorney for the District of Columbia),  
On General Practice and Exercises in Pleading and Evidence.  
FREDERICK VAN DYNE  
(Late Assistant Solicitor, Department of State),  
On Citizenship.

The thirty-eighth annual session opens Wednesday, September 30, 1908, at 6.30 p. m., in the Law School Building, 508 E street northwest, at which time announcements will be made for the ensuing term. All interested are cordially invited to be present.

TUITION.....\$100.00

The Secretary will be at his office in the Law Building daily for information, enrolment, payment of fees, etc. Students proposing to connect themselves with the school are earnestly requested to enroll before the opening night.

Circulars can be obtained at the bookstore of Lowder milk & Co., 1424 F street northwest, and John Byrne & Co., 1522 F street northwest, or upon application to the undersigned.

R. J. WATKINS,  
Secretary.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

RULE 17, SEC. 3. Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.



## Legal Notices.

## FIRST INSERTION.

Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re The Extension of an Alley in Square 2847, in  
the District of Columbia. District Court, No. 788.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1608 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the extension of an alley in square numbered twenty-eight hundred and forty-seven (2847), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the extension of said alley and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 8th day of October, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 26th day of October, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 26th day of October, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 26th day of October, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 41-1

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James J. Barnes, Deceased.  
No. 15,503. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sara Boulter Barnes, it is ordered, this 6th day of October, A. D. 1908, that Emma E. Barnes, Chancy R. Barnes, and Nellie Delamater, and all others concerned, appear in said court on Tuesday, the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner,  
Register of Wills for the District of Columbia,  
Clerk of the Probate Court. 41-3

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, which was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Mary A. Cook, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of October, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,762. Administration. [Seal.] 41-3

## Legal Notices.

John B. Larnier, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lottie F. Holmead, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,495. Administration. [Seal.] 41-3

M. J. Colbert, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas J. Carley, sometimes called John T. Carley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of October, 1908. PATRICK J. DEURY, 210 10th st. N. W.; PATRICK F. CARLEY, 1158 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,524. Administration. [Seal.] 41-3

John B. Larnier, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Calvin DeWitt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,497. Admn. [Seal.] 41-3

McKenney & Flannery, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph C. Hornblower, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. CAROLINE B. HORNBLOWER, 2080 Hillyer Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,518. Administration. [Seal.] 41-3

Perri W. Frisby, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jesse Barnes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. LOTTIE BARNES, 614 4th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,534. Administration. [Seal.] 41-3

**Legal Notices.****H. R. Webb, Attorney**

**In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Ellen C. Hebb, De-  
ceased. No. 15,515.**

Application having been made herein for the probate of the last will and testament of the said deceased, and for letters testamentary on said estate, by Bertha Y. Hebb, it is ordered this 8th day of October, A. D. 1908, that Elizabeth L. Hebb, Hopewell Hebb, Archibald Hebb, Sally E. Hebb, Vernon Hebb, Richard Hebb, Lawson Hebb, and Clinton Hebb, and all others concerned, appear in said court on the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication

[Seal] to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 41-8t

**S. Duncan Bradley, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 2d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1908. TIMOTHY O'CONNOR, 3319 Quest. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,516. Administration. [Seal.] 41-8t

**H. J. Gibbons and T. L. Jeffords, Attorneys**

**In the Supreme Court of the District of Columbia.  
In re Dissolution of the Kerner & Getts Jobbing-  
Publishing Company. Equity, No. 28,067.**

**ORDER.**

It appearing that petition has been filed in this court for a voluntary dissolution of the body corporate, the Kerner & Getts Jobbing-Publishing Company, and it further appearing that such application is accompanied by the accounts, inventories, and affidavit by law required, it is, on motion of Tracy L. Jeffords, attorney for petitioner, this 5th day of October, 1908, ordered that all persons interested in the said corporation, Kerner & Getts Jobbing-Publishing Company, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 20th day of November, 1908, why the said corporation should not be dissolved. And further, that notice of this order be published in The Washington Herald, a newspaper of general circulation in the District of Columbia, and also in The Washington Law Reporter, weekly for three successive weeks, the first publication to be not less than one month before the said 20th day of November.

[Seal] 1908, the day fixed for showing cause as aforesaid. HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. E. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 41-8t

**SECOND INSERTION.****Newton & Gillett, Attorneys**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Bryson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. ELIZABETH T. BRYSON, 714 12th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,417. Administration. [Seal.] 40-8t

**Legal Notices.****Lambert & Yeatman, Attorneys**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel F. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS P. SHOEMAKER, 612 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,509. Administration. [Seal.] 40-8t

**Wm. M. Lewin, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza J. Hyland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. CHARLES H. HYLAND, 885 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,477. Administration. [Seal.] 40-8t

**Frank S. Bright, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Augusta Louisa Weisenborn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. FRANK S. BRIGHT, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,521. Administration. [Seal.] 40-8t

**C. Clinton James, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Margaret A. Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. MAGGIE E. LITTLE, 1011 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,348. Administration. [Seal.] 40-8t

**Henry C. Stewart, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann Eliza Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. HENRY C. STEWART, 617 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,514. Administration. [Seal.] 40-8t

**Legal Notices.**

R. L. Montague, J. A. Moriarty, and L. A. Bailey,  
Solicitors

In the Supreme Court of the District of Columbia.

Mary V. Mueller, Petitioner, v. Martin Mueller et al.,  
Defendants. No. 27,824. Equity Doc. 61.

The object of this suit is a divorce from the bond of marriage between the petitioner, Mary V. Mueller, and the defendant, Martin Mueller, custody of their infant child and other and general relief. The grounds are adultery, drunkenness, and cruelty. On motion of the petitioner, it is this 1st day of October, 1908, ordered that the defendant, Martin Mueller, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day.

[Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 40-St

Lambert & Yeatman, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Catharine E. Gaskins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS P. SHOEMAKER, 614 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,886. Administration. [Seal.] 40-St

Berry & Minor, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Biagio Giuseppe Corio, otherwise known as Giuseppe Corio and as Leo Corio, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1908. HUGH B. ROWLAND, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,506. Administration. [Seal.] 40-St

George E. Fleming, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Sarah J. Lewis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of September, 1908. UNION TRUST COMPANY, by George E. Fleming. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,573. Administration. [Seal.] 40-St

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered, and bound.

**Legal Notices.**

William A. McKenney, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Maria Williams, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of September, 1908. AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,561. Administration. [Seal.] 40-St

**THIRD INSERTION.**

Darr, Peyser & Curtin, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Maryland, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Helen V. E. Strecker, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. FREDERICK W. BERGMAN, Suitland, Md. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,492. Administration. [Seal.] 39-St

Crandal Mackey, Solicitor

In the Supreme Court of the District of Columbia.

Charles W. Jarrell, Complainant, v. Sadie E. Jarrell,  
Defendant. Equity, No. 27,994.

**ORDER OF PUBLICATION.**

The object of this suit is to obtain an absolute divorce from the defendant upon the ground of adultery. On motion of the complainant, it is, this 23d day of September, A. D. 1908, ordered that the defendant, Sadie E. Jarrell, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 39-St

Edward S. Bailey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Adella L. S. Thoms, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of September, 1908. CHARLES H. HORTON, 18 4 Mass. ave.; BENJAMIN G. POOL, 945 E. I. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,310. Administration. [Seal.] 39-St

Justice blanks of every description for sale at this office.

**Legal Notices.****Henry C. Stewart, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers, who were, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Frank P. Burke, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 23d day of September, 1908. JAMES M. GREEN, PATRICK J. WALSH, by Henry C. Stewart, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,772. Administration. [Seal.] 89-8t

**Gordon & Gordon, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John R. Garrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 24th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 24th day of September, 1908. JENNIE GARRISON, FIELDING H. GARRISON, 1487 R. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,500. Administration. [Seal.] 89-8t

**Geo. Francis Williams, Attorney****In the Supreme Court of the District of Columbia.****Lulu Tippin v. Alice C. Burr et al.  
No. 27,612. In Equity.**

George Francis Williams, trustee, having reported that he has sold at private sale, subject to the confirmation of the court, as heretofore authorized, lot 34 and the north 5 feet front by depth of lot 35 in King's subdivision of Long Meadows, in this District, unto Henry F. Houck for two hundred and twenty-five dollars, it is, this 25th day of September, 1908, ordered that said sale be confirmed unless cause to the contrary be shown on or before the 26th day of October, 1908. Provided this order be published once a week for three successive weeks before that day in The Washington Law Reporter.

[Seal] By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 89-8t

**G. F. Williams, Solicitor****In the Supreme Court of the District of Columbia.****Lulu Tippin v. Alice C. Burr et al.  
No. 27,612. In Equity.**

George Francis Williams, trustee in the above entitled cause, having reported that he has made the following sales at public auction, namely, part of lot 19 in Rothwell and Naylor's subdivision of square 425, in the city of Washington, with improvements, unto Charles T. Burns for \$4,100.00; premises 1243 Bladensburg Road, being parts of lots 28 and 29 in King's subdivision of Long Meadows, in the county of Washington, District of Columbia, unto Henry F. Houck for \$650; premises 1244 Bladensburg Road, being part of lot 29 in said King's subdivision of Long Meadows, unto said Henry F. Houck for \$650; premises 1246 Bladensburg Road, being parts of lots 29 and 30 of said King's subdivision of Long Meadows, unto John Bello for \$805, it is this 22d day of September, 1908, ordered, that all of said sales be confirmed by the court, unless cause to the contrary be shown on or before the 22d day of October, 1908. Provided this order be published once a week for three successive weeks before said last mentioned day in The Washington Law Reporter. By the Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 89-8t

**Legal Notices.****Richard A. Ford, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Alexander J. Bentley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. ALEXANDER GARNER BENTLEY, Union Trust Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,442. Admn. [Seal.] 89-8t

**George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Charles K. Stellwagen, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. EDWARD J. STELLWAGEN, Union Trust Co. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,512. Administration. [Seal.] 89-8t

**Raleigh Sherman, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William A. Wroe, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of September, 1908. RALEIGH SHERMAN, 1410 H. st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,118. Administration. [Seal.] 89-8t

**Wm. E. Ambrose, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Michael Clarke, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 21st day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 21st day of September, 1908. MICHAEL F. CLARKE, 1100 21st st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,502. Administration. [Seal.] 89-8t

**FOURTH INSERTION.****Thomas P. Woodward and W. Mosby Williams,  
Solicitors****In the Supreme Court of the District of Columbia.  
John Kennedy, Complainant, v. Kunigunda Heisler  
et al. Equity, No. 27,980.**

The object of this suit is to establish that John Heisler and Kunigunda Heisler, his wife, signed the deed recorded in Liber J. A. S. 22, folio 468, and to declare complainant's title perfect by adverse possession to the north 14 feet front on 7th street by the full depth that width of original lot 7 in square 447, situate in the city of Washington, in the District of Columbia, as more fully set forth in the bill. On motion of the complainant, it is, this 14th day of September, 1908, ordered that the

**Legal Notices.**

defendant, Kunigunda Heisler, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and devisees of John Heisler, deceased, of Kunigunda Heisler, deceased, and each of them, cause their appearance to be entered herein on or before the first rule day occurring after six weeks from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for the first four weeks prior to said rule day in The Washington Law Reporter, for good cause shown a longer period of publication being dispensed with.

[Seal] **ASHLEY M. GOULD, Justice.** A true copy.

Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

**D. W. Baker, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Special Term as a District Court.  
No. 780.

In the matter of the condemnation of squares two hundred and twenty-six (226), two hundred and twenty-seven (227), two hundred and twenty-eight (228), two hundred and twenty-nine (229), and two hundred and thirty (230), in the city of Washington, in the District of Columbia, for use and accommodation of the United States Departments of State, Justice, and Commerce and Labor, it is ordered, this 18th day of September, A. D. 1908, that the order of publication heretofore issued and published in The Washington Star and The Washington Post and The Washington Law Reporter be amended by adding the following names: Henrietta Harvey Dyer, Margaret R. Long, Florence Dyer Berry, Daisy Dyer Howard, and Andrew J. Miller, and that said publication be continued as heretofore ordered. By the Court: **ASHLEY M. GOULD, Justice.** A true copy. Test: J. R. Young, Clerk, by S. McC. Hawken, Asst. Clerk.

**FIFTH INSERTION.**

**J. J. Darlington and W. C. Sullivan, Solicitors**  
In the Supreme Court of the District of Columbia.  
**Julia Ten Eyck McBlair et al. v. George F. Green et al.**  
No. 27,887. Equity Doc. —.

The object of this suit is to declare complainants' title perfect, by adverse possession, to original lots numbered eight (8) and eleven (11) in square numbered seventy-eight (78), Washington, District of Columbia, as described in the bill. On motion of the complainants, it is, this 28th day of August, A. D. 1908, ordered that the defendants, Mary I. Lewis, Alice Q. Bruce, Rousby Quinsbury, Belle F. Quinsbury, Emma L. Quinsbury, Emma Rose Quinsbury, Eastmon F. Green, Easle C. Gandell, John W. Sykes, Mary Sykes Findley, Daniel P. Wirt, Augusta Wirt Nalle, Forrest Tayloe, and Louisa D. Tayloe, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and devisees of Charles Gilchrist, John Hewitt, Uriah Forrest, Rebecca Forrest, George Forrest, Benjamin S. Forrest, Ann Green, Maria Tayloe Bohrer, Maria G. Devereux, Rebecca Ann Green or Ann Rebecca Green, Elizabeth R. Quinsbury, Alice G. de Yturblide, Osceola C. Green, Nicholas Quinsbury, John Tayloe, 3d, John Tayloe, 4th, Maria Tayloe Sykes, Catherine Tayloe Wirt, and of each of them, cause their appearance to be entered herein on or before the first rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, for the first month, and twice a month for the two succeeding months.

[Seal] In The Washington Law Reporter. **WENDELL P. STAFFORD, Justice.** A true copy.

Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

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**Legal Notices.**

**Edwin L. Wilson, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**Edwin L. Wilson v. Samuel Elliot, Junior, et al.**  
Equity. No. 27,976.

The object of this suit is to establish title to the north 100 feet of lots 20, 21, and 22, by the full width thereof, and all of lots 23 and 24, in square 888, in the city of Washington, District of Columbia, to be good in fee simple in complainant by reason of adverse possession thereof for more than twenty years. On motion of the complainant, it is this 2d day of September, A. D. 1908, ordered that the defendants, Samuel Elliot, Junior, Thomas Bulfinch, Harriet A. Deming, Thomas W. Pairo, and Buckner Bayliss, if living, or, if any of said defendants be dead, the unknown heirs, devisees, and devisees, if any, of those who are dead, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of two months from this date, good cause for fixing such time having been shown to the satisfaction of the court; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks for the first month, and twice a month for the second and succeeding month thereof in The Washington Law Reporter.

[Seal] In The Washington Herald. By the Court: **WENDELL P. STAFFORD, Justice.** A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk.

**C. S. Hillyer, Solicitor**  
In the Supreme Court of the District of Columbia.  
**Virginia M. Davis, Complainant, v. The Unknown Heirs, Devisees, and Alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, Defendants.** No. 27,983. Equity Doc. —.

The object of this suit is to declare complainant's title perfect, by adverse possession, to the following described lands, premises, easements, and appurtenances, in the District of Columbia and city of Washington: Part of original lot numbered seven (7), in square numbered nine hundred and four, contained within the following metes and bounds, viz, beginning for the same at a point distant twenty-four (24) feet four (4) inches north from the southwest corner of said lot and running thence north along the line of Seventh street east, eighteen (18) feet eight (8) inches; thence east, one hundred and nine (109) feet one (1) inch; thence south, eighteen (18) feet eight (8) inches, and thence west, one hundred and nine (109) feet one (1) inch, to the place of beginning. On motion of the complainant, it is, this 7th day of August, 1908, ordered that the defendants, the unknown heirs, devisees, and alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. (Signed) **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

**SIXTH INSERTION.**

**J. Harry Smith, Attorney**  
In the Supreme Court of the District of Columbia,  
Holding a Special Term for Equity Business.  
**Missouri Blackman, Complainant, v. The Unknown Heirs at Law, Devisees, and Alienees of Richard Sewell, Deceased.** Equity No. 27,888.

The object of this suit is to declare the title to the south 19 feet fronting on 21st street N. W. and running back equal width the depth of original lot 21, in square 78, in the city of Washington, District of Columbia, to be good of record in complainant, and to perpetually enjoin and restrain the defendants from asserting any title to said real estate. On motion of the complainant, by her solicitor, it is, by the court, this 4th day of August, 1908, ordered that the defendants, the unknown heirs at law, devisees, and alienees of Richard Sewell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise this cause shall be proceeded with as in case of default. This order shall be published twice a month in the months of August, September, and October, 1908, in The Washington Law Reporter and The Washington Times. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

# The Washington Law Reporter

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### Time for Settlement of Bill of Exceptions.

An interesting question of practice was presented to the Court of Appeals of this District in the case of Howard v. International Trust Company of Maryland. It appeared that the term at which the trial was had ended on the fourth day after the verdict was rendered, and, no motion for new trial having been made, judgment was entered on the following day, being the fifth day after the verdict and the first day of the succeeding term. The appellee moved in the Court of Appeals to strike the bill of exceptions from the record because it was not presented nor settled before the close of the trial term as required by rule 54 of the court below and that term had not been extended for that purpose. The motion was resisted by the appellant, who advanced the contentions:

First. That "the term" referred to in section 2 of rule 54 means, and should be construed to mean the *judgment term* and not the *trial term*; that by giving said section this construction it will harmonize with section 2 of rule 53, and also with rule 55, whereas to construe it to mean the *trial term* would lead to confusion and ambiguity,

something which should be carefully avoided in all rules of court.

Second. That should the court construe "the term" referred to in section 2 of rule 54 to mean the *trial term*, then there is such an ambiguity in said rules as was calculated to mislead, and which did actually mislead the appellant to such an extent that he should not be debarred from having his bill of exceptions considered herein.

The Court of Appeals took the motion under advisement, and its decision will be awaited with interest. Mr. Walter C. Clephane appeared for the motion, and Mr. E. Beverly Slater in opposition thereto.

### Contracts to Make Provision by Will.

In *Warden v. Hinds*, decided by the United States Circuit Court of Appeals for the Fourth Circuit (163 Fed., 201), it was held that an action at law to recover damages for an alleged breach of a contract to make a bequest of a certain sum to plaintiff by will can not be maintained during the lifetime of the proposed testator. The court said in part:

"Assuming that the expressed intention of the defendant, as set out in his letter to the plaintiff, to make a codicil to his will and bequeath her the sum of \$5,000, was a contract based upon sufficient consideration to support it, when could a breach of it occur such as to entitle the plaintiff to bring her suit? All the authorities agree that one may, for a valuable consideration, and in some instances a good consideration, renounce the absolute power to dispose of his estate at pleasure and bind himself by a contract to dispose of his property by will to a particular person, and that such contract may be enforced in the courts after his decease, either by an action for a breach against the personal representative or in the proper case by a bill in the nature of specific performance against his heirs, devisees, or personal representative. *Johnson v. Hubbell*, 10 N. J. Eq., 332, 66 Am. Dec., 773. However, we have been unable to find any case in which the right to recover damages in an action at law for an alleged breach of such contract during the life of the testator has been upheld. Indeed, the principle generally declared is that such contracts are susceptible of enforcement only after the death of the testator by bill in equity for specific performance." Citing *Bolman v. Overall*, 80 Ala., 451.

### Res Ipsa Loquitur.

In *Anderson v. McCarthy Dry Goods Company* (95 Pac., 345), recently decided, the Supreme Court of Washington passed on the application of the doctrine of *res ipsa loquitur* in an action for injuries caused by the fall of a basket from the overhead carrier system in a store. The only facts proven by the plaintiff were that, while a customer at the defendant's store, the basket was precipitated on her, causing the injuries of which she complained. A judgment of nonsuit was entered by the trial court. The appellate court, however, reversed this judgment, holding that while the doctrine of *res ipsa loquitur* should be sparingly invoked, yet the case should have been submitted to the jury.



**The Medical Witness in Lunacy Cases.\***

By **PASLEY C. HUNT, M. D.,** Neurologist Providence Hospital, etc., Washington, D. C.

The paper may be practically and conveniently divided into three parts.

First. The medical witness in inquisitions in lunacy.

Second. In criminal cases.

Third. In testamentary cases.

The medical witness in inquisitions in lunacy in this jurisdiction testifies in open court before judge and jury the reasons for his believing the patient to be of unsound mind. The patient supposed to be of unsound mind is examined by two physicians who determine whether temporary commitment to the Government Hospital for the Insane is required, for either the control of the patient or for the protection of others. Within thirty days after temporary commitment to the Government Hospital for the Insane an inquirendo lunatico is ordered by the court to determine the legal aspects of the case and whether a necessity for such committal still exists. The patient is present at this hearing unless his physical condition is such that it would prove detrimental to his health, in which case a certificate to this effect is sent to court by the superintendent of the Government Hospital for the Insane. After petition has been filed by the Commissioners of the District of Columbia requesting an inquirendo lunatico by the court, an alienist is authorized by the executive authority of the District of Columbia to examine and testify in court in regard to the present mental condition of the patient sent from the District of Columbia to the Government Hospital for the Insane, and if the patient is not produced in court the reason for his inability to appear is testified to. The present law should be so altered that a patient should be detained at the hospital for care and treatment; if the patient's mental condition is such that he is unable to advise counsel, or if he is suffering from an acute psychosis that would be aggravated by the court proceedings, he should not appear. Also, if temporary commitment was extended from the present thirty day limit to ninety days, during which time legal proceedings could be instituted, and the matter brought to the attention of the court, much good would be accomplished. It would give the Board of Charities time to locate and return to their homes non-residents without the misfortune of insanity resting on these cases; also many of the cases of acute insanity would recover within that time and be discharged by the superintendent, the family and friends being thus spared the stigma and exposure of a court trial and of a dear and loved one being legally declared of unsound mind. The degree of trouble the insane patient causes outside an institution, should determine the commitment, together with the inability of his family or friends to give the needed care or to relieve his family of too great a burden and responsibility. The medical witness makes a good appearance in this friendly hearing in which the wishes of friends and family are given consideration and the best efforts of the court are directed to the patient's ultimate good.

In criminal cases, the judges are most painstaking in giving the defendant before them the fullest benefit of the insanity plea in palliation of

his offense and in mitigation of his punishment. The treatment that the insane person receives at the hands of the law begins from the moment of his arrest until he is serving his sentence in prison. Proved insanity in the defendant puts a stop to all criminal proceedings against him, at whatever stage of the proceedings the insanity is observed. If after being charged and before committal, he is not committed; if after he is committed for trial and before arraignment, he is not arraigned; if after arraignment, he is not tried for the offense with which he is charged; but in each instance is sent to the Government Hospital for the Insane; on regaining his sanity he would be certified as recovered by the superintendent, and would again as a defendant come under the court's jurisdiction. At his trial he may put in a plea of insanity, and the jury's verdict may be "not guilty by reason of insanity." On recovery of his sanity after this verdict, the law having no further hold on him, he is discharged a free man. If found of unsound mind after trial, he is not sentenced, or if he becomes insane while under sentence or while serving time he is committed to the Government Hospital for the Insane until he regains his sanity, when the law again takes charge of his person. In Police Court cases, the attending physician to the United States jail requests an alienist to see alleged cases of insanity among the prisoners, and as a result of this joint examination a report to the presiding judge or the Department of Justice is made, for their guidance, and such advice is invariably followed. The procedure in the criminal courts is as follows: the district attorney's office requests of the Department of Justice the power to employ alienists who testify at the trial in regard to the mental condition of the defendant; if they believe the defendant to be of unsound mind, the Government may turn the witness over to the defense, or on examination this fact will be disclosed. If the defendant for financial reasons is unable to employ alienists, the court directs that one or more shall be assigned him. It is the duty of the district attorney's office to secure the attendance of the necessary witnesses, and to take steps to ensure that the whole of the evidence of the sanity of the defendant is fully brought before the jury. In my opinion, a law should be framed providing that a commission consisting of the attending physician to the United States jail, the superintendent of the Government Hospital for the Insane and one or more alienists be appointed by the Supreme Court of the District of Columbia to examine every case in which the defendant is under serious charges and that a written report be made to the presiding justice concerning the defendant's mental condition. If the defendant objects to this examination, it should take place after conviction and before the prisoner is sentenced. In examining an alleged insane person, a medical witness should provide himself with writing materials and take down the person's statements in the person's own words and in his presence at the time the words are uttered. Not only is this the only way of insuring the accuracy of the report, but it gives the examiner the right which otherwise he would not have of consulting his notes in court. The things contained in this report should be facts, not inferences from facts. The only things that can be recorded as facts are how the person appears, what he says, and what he does. A delusion

\*Read before the Medical Society, D. C., Oct. 14, 1908.

can not be observed, defect of memory can not be observed; morbid desire, confusion of thought, lack of knowledge, etc., are all hidden from observation; they may be inferred from what the person says or does, but observed they can not be. To the jury one little delusion is of far greater importance than a weakened mind. The terms emotional insanity and moral insanity are each excluded in this jurisdiction. In cross-examination as medical witnesses, you will most need self-possession. You are entitled to have questions put clearly; are under no obligation to answer "yes" or "no" to a question which does not admit of such an answer without conveying a false notion of your meaning; you are entitled to qualify your answer as much as you please in order to make it convey your meaning accurately; you can not be interrupted by counsel while replying to a question; make your answers short, simple, and plain; always remember that your knowledge of the subject is superior to that of the best coached lawyer; you are sworn to tell the truth, and the whole truth you must tell when you are asked, no matter what the consequences may be.

In testamentary cases it may be held as proved by legal decisions that a lesser amount of mental capacity is needed for making a valid will than for managing property or enjoying personal liberty. Patients in asylums have made good wills during remissions of their disease. Wills of patients with insane delusions that did not affect the provisions of the will have been held valid. Easily controlled persons have made good wills; persons at the point of death or those immediately before committing suicide have had their wills upheld. In examining the testamentary capacity of a person to manage property or make a will the physician should insist on seeing the patient alone, and then ascertain if the person is free from the influence of drink or drugs and in his usual state. Does he know the nature of the act he is to perform or the effect of the document he is to sign? Find out if he is influenced in the doing of it or in regard to any of its provisions by insane delusion or by an insane or morbidly enfeebled state of mind. Ascertain if there is weakened mind from bodily disease, intemperate habits, or undue influence being exercised. Impress on *acting* lawyers to make wills that may be questioned—short, simple, and free from technicalities. It is stated, by a distinguished English counsel with a large experience in the Probate Court, that no will has been upset where a reputable doctor had witnessed it after examining into the testator's state of mind and an agent of repute had drawn it up, neither of them taking any benefit under its provisions. Make such an intending testator go carefully over the particulars of what disposition of his estate he wishes made, without prompting, suggestion, or leading question, twice with a quarter of an hour's interval between the two statements. Ascertain, if possible, from him if he had intended to will his property as proposed before his illness, and for how long a time before. Try to get independent testimony from others on this point. In examining persons it is very desirable to be perfectly impartial, to make no suggestion as to the propriety of the act or the settlement to be made, and on no account to influence the testator as to the disposition of his property.

In concluding this paper, which is an expres-

sion of my personal views gathered from a not too limited experience in medico-legal work, it seems but fitting to express my opinion in regard to the hypothetical question. The question originally consisted of the salient features of certain facts established by the evidence of ordinary witnesses, and admitted by the court, fitted to an imaginary person, the alienist giving his opinion that such a person under the conditions stated in the question was either of sound or unsound mind. The advocates cull the points advantageous to the side they represent, omitting those facts that are opposed to their side of the case. The question, as at present propounded, should be abandoned, as it has done more, probably than anything else, to detract from the value of the medical witness, to make him an object of derision to the public, and his testimony the torn and ragged plaything of litigants and contestants. It is unscientific and the physician as well as the lawyer should use his best efforts to secure such alterations of the law that all the facts pro and con in the case in question would be submitted to a commission of alienists whose duty it would be to make a written report of their findings and act in an advisory capacity to the court.

The hypothetical question is valid and legal and will probably continue to be used, but if the witness will insist on having all the obtainable facts upon which this question is based placed before him including the person, if possible, whose mental state is in question, and by conscientiously endeavoring to sift the chaff from the wheat, compel the hypothetical question to be built on the foundation of truth, the alienist's reputation and power for good in the community will be greatly enhanced, and he will gain the respect of the judge and the confidence of the jury.

**Jurisdiction—Of District Judge.**—In the case of *In re Steele* (20 Am. B. R., 446), it has been held that a United States district judge, even though a judge of the northern and middle districts of Alabama, has no jurisdiction, while holding court in the middle district thereof, to make an order appointing a referee in bankruptcy for the Northern District of Alabama; and that a United States district judge, even though a judge of the northern and middle districts of Alabama and residing in the middle district, has no jurisdiction or authority to go into the northern district while the judge of the said northern district is holding court therein, and make an order appointing a referee in bankruptcy and prescribing a rule for the reference of proceedings in bankruptcy to said referee so appointed by him, without the concurrence of the judge of the said northern district.

**Bankruptcy Act—Section 64a.**—It is held in *re Otto F. Lange Co.* (20 Am. B. R., 478), that the word "tax" in section 64a of the Bankruptcy Act is not used in any restricted sense, but includes all obligations imposed by the State and general governments under their taxing or police powers and its meaning is to be determined ultimately by the Federal courts; and that the annual tax imposed by section 5007 of the Code of Iowa on every retail dealer in cigarettes in addition to all other taxes, etc., is a "tax" within the meaning of section 64a of the Bankruptcy Act.

**Covenant to Use Premises for First-Class Residences Only.**

In the case of *Korn v. Campbell*, decided by the Court of Appeals of New York on September 29, 1908, and reported in the *New York Law Journal*, it appeared that a plot of land in the city of New York was conveyed with a covenant that the grantees should "use or suffer said premises to be used for the erection of first-class private residences only." A subsequent purchaser, whose deed contained the restriction quoted, divided the plot into building lots, mortgaged each lot separately, erected dwelling houses thereon, and sold them to different parties with no mention in the mortgages or in the deeds of the restriction. The plaintiff and defendant both derived title to their respective lots from this common owner through foreclosure of the mortgages and by mesne conveyances which contained no reference to the restriction. In an action, wherein the plaintiff sought to restrain the defendant from converting his dwelling into a business house, it was held that the action could not be maintained; that as between the owners of the respective lots, who had derived title from a common source imposing no restriction upon the uses to be made of the property, the earlier limitation could not be enforced. The court said:

"This action is brought to restrain the defendant from making alterations in the building upon his lot, which are designed to render it convenient and suitable for certain business purposes, and the plaintiff predicates his right to this relief upon a restrictive covenant which, among other things, recites that the premises out of which the respective lots of the plaintiff and the defendant have been carved shall 'be used for the erection of first-class private residences only.'

"The question is whether that covenant can be enforced by the plaintiff against the defendant. At special term it was held that it could. At the Appellate Division a contrary decision was reached, although by a divided court, and the case is now before this court upon plaintiff's appeal.

"Since everything depends upon the history of the titles and the covenant referred to, a short statement of the salient facts is necessary to a proper understanding of the precise question involved. On the 10th day of August, 1870, James Lenox conveyed to William Lalor a plot of land which had a frontage of 102 feet and 2 inches on the west side of Madison avenue and a frontage of 195 feet on the north side of Seventy-third street. The deed by which this conveyance was made contained the covenant above referred to. This covenant, after prohibiting upon these premises many noxious and objectionable trades, occupations and structures, provided that the grantee 'will use or suffer the said premises to be used for the erection of first-class private residences only.' So far as the record discloses, Lenox owned no other lands in that immediate neighborhood, and the lots now owned by the parties to this action are embraced in the tract thus conveyed. On the 12th day of August, 1870, Lalor and wife conveyed to James H. Coleman an undivided one-third interest in the tract of land above described, but the deed contained no reference to the covenant set forth in the deed from Lenox to Lalor. On July 1, 1871, Lalor and Coleman, with their respective wives, conveyed the whole tract to James E. Co-

burn by a full covenant warranty deed, which referred to the covenant in the deed from Lenox to Lalor as follows: 'Subject to the conditions, covenants and restrictions against nuisances and buildings contained in deed of James Lenox of the above described premises.' Coincident with the delivery of this deed to Coburn, he executed to the North American Life Insurance Company eleven separate mortgages, one upon each of eleven lots into which he had divided the whole tract thus derived from Lalor and Coleman. Neither of these mortgages contained any reference to the restrictive covenant in the deed from Lenox. Upon these eleven lots Coburn erected private dwelling houses, which were disposed of to various persons by deeds in which there was no mention of that covenant. In 1879 the mortgages given by Coburn to the insurance company were foreclosed. The premises now owned by the plaintiff then belonged to Mary H. Moore, and title to the lot now owned by the defendant was then in Artemus H. Holmes, both of these grantees holding under deeds subsequent in date to the mortgage above referred to, and both having derived their titles through Coburn by deeds which did not refer to the restrictive covenant in the original deed from Lenox. Thus stood the title to the premises now owned by the plaintiff and the defendant, respectively, when the mortgages to the insurance company were foreclosed in 1879, and the premises were sold under referee's deeds which embodied no part of the restrictive covenant and made no reference thereto. The plaintiff's lot was bid in by Gustav Gottheil and the defendant's lot by Artemus H. Ward, who was then the owner of the equity of redemption. From that time down to the conveyance to the plaintiff the title to his lot passed by mesne conveyances in the form of full covenant warranty deeds, none of which referred to the restrictive covenant in the deed from Lenox, and the title to the defendant's lot passed by similar conveyances, with a single exception in 1887, when Jacob B. Tallman became the owner thereof under a deed 'subject to the covenant against nuisances and as to buildings contained in a certain deed made by James Lenox to William Lalor, dated the 10th day of August, 1870, and recorded in the office of the register aforesaid in Liber 1154 of Conveyances, page 253, August 10, 1870.'

"There has been much judicial writing upon the subject of restrictive covenants, and, as may be anticipated from the very nature of the topic, the cases abound in fine and subtle distinctions which have been invented either to overcome the rigor of the common law in courts of equitable cognizance or to adapt the settled forms of relief to fit special cases. There are many decisions upon this branch of the law which appear to be in hopeless conflict with each other, but which are easily reconcilable when their peculiar circumstances are understood. We shall make no attempt to analyze the decisions, for we think the case is plainly outside of any rule under which restrictive covenants can be enforced. For the particular purposes of this case such covenants may be broadly divided into three classes. In the first class may be placed those which are entered into with the design to carry out a general scheme for the improvement or development of real property. This class embraces all the various plans, generally denominated in the English cases as build-

ing schemes, under which an owner of a large plot or tract of land divides it into building lots to be sold to different purchasers for separate occupancy by deeds which contain uniform covenants restricting the use which the several grantees may make of their premises. In such cases the covenant is enforceable by any grantee as against any other upon the theory that there is a mutuality of covenant and consideration which binds each and gives to each the appropriate remedy. Such covenants are entered into by the grantees for their mutual protection and benefit, and the consideration therefor lies in the fact that the diminution in the value of a lot burdened with restrictions is partly or wholly offset by the enhancement in its value due to similar restrictions upon all the other lots in the same tract. Illustrations of this class may be found in *De Gray v. Monmouth Beach Club House Co.* (50 N. J. Eq., 340); *Parker v. Nightingale* (88 Mass., 341); *Nottingham Co. v. Butler* (15 Q. B. D., 261), and *Barrow v. Richard* (8 Paige, 351).

"The second class embraces those cases in which the grantor exacts the covenant from his grantee, presumptively or actually, for the benefit and protection of contiguous or neighboring lands which the former retains. In such cases the grantees, if there are more than one, can not enforce the covenant as against each other, although the grantor, and his assigns of the property benefited, may enforce it against either or all of the grantees of the property burdened with the covenant. In this class are the leading cases of *Tulk v. Moxhay* (2 Phillips Ch., 774), and *Whitney v. Union Ry. Co.* (11 Gray, 359); *Seymour v. McDonald* (4 Sand. Ch., 502) and *Equitable Life Assurance Society v. Brennan* (148 N. Y., 661).

"Then there is a third class, where there are mutual covenants between owners of adjoining lands in which the restrictions placed upon each produce a corresponding benefit to the other, and in such a case, of course, either party or his assigns may invoke equitable aid to restrain a violation of the covenant. *Trustees of Columbia College v. Lynch*, 70 N. Y., 440.

"We think the case at bar does not fall within either of the three classes referred to. Obviously it is not in the first class relating to a division of land into lots conveyed by separate deeds containing covenants entered into by each of the grantees. Lenox conveyed the whole plot to Lalor. That conveyance, it is true, was made subject to the restrictive covenant, but there is no evidence that the land was to be divided and Lalor was under no obligation to divide it. The covenant was purely for the benefit of Lenox or his remaining lands, if he had any such. In no aspect of the case could the covenant be said to have benefited any part of the land burdened by it. That land all belonged to Lalor. It was all in one piece and it was all covered by the same restrictions. The same conditions prevailed when Lalor conveyed an undivided one-third interest in the land to Coleman. The latter took with notice of the covenant in the deed from Lenox to Lalor, and, assuming that it was not merely a dry personal covenant, Lenox could have enforced it against Coleman as well as against Lalor. When Lalor and Coleman conveyed to Coburn, subject to the covenant in the deed from Lenox to Lalor, the land was still in a single piece, and Coburn, the absolute owner of it, was free to do with it as he pleased except

as against Lenox, the original covenantee, or those who stood in his shoes. At this juncture in the history of the title there was for the first time a division of the property. Eleven separate lots were mortgaged by Coburn to the insurance company, but none of the mortgages embodied any part of the restrictive covenant or contained any reference thereto. When the separate lots were thereafter conveyed to different grantees there was no mention of the covenant, and when the mortgages were subsequently foreclosed the referee's deeds were qualified by no restrictions. Upon these facts we can not assent to the contention of the learned counsel for the plaintiff that Lenox was the common grantor of the parties to this action; that the covenant was exacted by Lenox because the property was to be divided into lots, and that it was taken, not for his own benefit, but to protect those who might later become the separate owners of parts of the tract. By the inevitable logic of the transaction Coburn became the common grantor of the parties. Having the title to the whole of the land he had the right to do with it as he pleased, except as against Lenox and his assigns. Coburn decided to divide the property and to sell it without restrictions, and he carried his resolution into effect. Neither the plaintiff nor the defendant have any different title than that which they derived through the unrestricted deeds from Coburn. The original covenant, which may be good in favor of Lenox or his assigns as against any grantee of Coburn in this tract, is not enforceable as between such grantees.

"It is equally clear that the plaintiff has not brought this case within the second class mentioned. It might be within that class if the plaintiff were in court representing Lenox. In that event the question would arise whether the covenant was one purely personal to Lenox, and, if so, whether it would be enforceable at all, or whether it was made for the benefit of land retained by Lenox when he sold to Lalor, but afterwards conveyed to the plaintiff. But that is not the situation. The plaintiff represents Coburn, the covenantor. He stands for the land burdened and not for any land benefited by the covenant. And in that regard the plaintiff and the defendant are upon precisely the same footing with reference to the original covenant. Neither is under any covenant obligation to the other, although both may possibly be bound to the original covenantor. In other words, the case can only be brought into the second class by a plaintiff who acquired the title of Lenox to lands for the benefit of which the covenant was made.

"It is plain also that the case is not within the third class referred to. That class includes only those cases in which the owners of adjoining or contiguous lands enter into mutual covenants containing restrictions by which each is burdened for the benefit of the other. It is not even claimed that the plaintiff comes within this rule, and we have referred to it solely for the purpose of demonstrating that the plaintiff is not within either of the three general rules under which such covenants may be enforced. We do not mean to intimate that special circumstances may not exist in which a case not within the three classes above referred to may present considerations which would justify the enforcement of such a covenant in a court of equity. It is enough to say that no such circumstances appear in the case at bar. We

have used the foregoing classification as a brief and convenient method of showing that all the authorities relied upon by the plaintiff fall within one or the other of these divisions, and that he is not within either of them. We might have stopped, indeed, with the discussion of the first class, for the plaintiff's whole position rests upon the assertion that when Lenox took the covenant from Lalor it was contemplated that the property should be divided into lots, and, as it does not appear that Lenox retained any lands to be benefited by the covenant, it must have been made for the mutual benefit of subsequent owners. We have shown why this position is not tenable upon the facts presented by the record, and we think the order of the appellate division should be affirmed, with costs."

**Misnomer of Defendant in Summons Served by Publication.**

[New York Law Journal.]

Two recent cases have passed upon the effect of service by publication as against a defendant misnamed in the summons, one of them upholding and the other denying the validity of the service, both of the decisions, however, proceeding upon broad grounds of equitable common sense.

In *Emery v. Kipp*, in the Supreme Court of California (July, 1908, 97 Pac., 16), it was held that a judgment against "Louisa Munro" quieting title to land decreed to her under that name, is not void because, when sued, she was a married woman, her name being "Madeline Louisa Munro Emery," and because her husband was not joined, the record of her marriage designating her as "Madeline L. Munro," and there being nothing to apprise a prudent person that she had married, though jurisdiction over her was obtained by published summons.

The court refers to the common law rule that one may change his name at will and sue or be sued in any name by which he is known and recognized. It further calls attention to the circumstance that "in nearly every State there are statutes authorizing the change of a man's name. A non-resident owner of land in California may legally cause his name to be changed in another State, and an adverse claimant in this State, after satisfying the court that after due diligence the non-resident owner can not be found within the State, may commence an action against the party under the name in which his record title stands. If a judgment so obtained can be collaterally attacked by a showing that the non-resident claimant had legally changed his name, and that therefore jurisdiction was not acquired, which is the contention here made, the value of such an action is at an end."

The court relies upon authorities to the effect that a judgment is valid against a married woman sued as a feme sole and in her maiden name, particularly upon any contract which she has executed in such name, and also upon such cases as *Graham v. Eizner* (28 Ill. App., 269), holding that a person may adopt any name in which to prosecute business and may sue or be sued in such name.

The second decision referred to is that of the Supreme Court of Minnesota in *D'Autremont v. Anderson Iron Co.* (May, 1908, 116 N. W., 357).

It was held that a non-resident in whose favor a judgment was docketed in the name of George W. Leslie would not be cut off from his lien against real estate by a partition action in which it was attempted to make such judgment creditor a party defendant under the designation of "George H. Leslie," the service of process being by publication. The Minnesota court concedes that an erroneous middle initial, or even the omission of a middle initial, is not necessarily fatal in all cases; that such error or omission may be a mere irregularity susceptible of correction, especially in cases where the intended defendant is actually served. The decision proceeds upon the theory that "errors and defects in the proceedings taken to obtain jurisdiction of non-residents, of a nature tending to mislead and prejudice the defendant, are fatal to the jurisdiction of the court," and the gist of it is conveyed in the following language from the opinion:

"Where, as in this case, there is an attempt to give the full name of the defendant, and a wrong initial is used, it must, in view of the very common practice of identifying particular individuals by adding their middle name, be held that the error is misleading, and likely to result in prejudice to those who may perchance notice the same as published in the newspaper."

It is significant of the harmonious policy of the two principal cases that in *Emery v. Kipp* the Supreme Court of California very materially relies upon the decision in *Blinn v. Chessman* (49 Minn., 140), in which was held valid a judgment affecting rights in land obtained through service by publication of a summons making the defendant a party under the erroneous name in which he had taken title to such land. In both the California and the earlier Minnesota cases the decision proceeds upon the express ground that "if one takes title to land in any other than his true name, so far as that property is concerned, he has assumed the name in which he takes title, and he may be sued thereunder."

**Contingent Fees.**

[New York Law Journal.]

The proposed Code of Professional Ethics was adopted at the meeting of the American Bar Association in August last in substantially the form published in this Journal for June 22, 1908. The Green Bag for October, 1908, contains the full text of the Code as finally promulgated. A slight change was made in section 13 regulating the subject of contingent fees. As originally submitted the contracting for contingent fees was sanctioned, but it was said that "they lead to many abuses, and should be under the supervision of the court."

Canon 13, as it appears in the Code adopted, is as follows:

"Contingent fees where sanctioned by law should be under the supervision of the court in order that clients may be protected from unjust charges."

The change in the language shows the conflict of sentiment as to whether contingent fees are proper under any circumstances; the opinion was unanimous that where they are legally recognized they should be under special judicial supervision. The Code of the American Bar Association thus leaves the regulation of the subject to the local sentiment of the various jurisdictions.

At its meeting in January, 1908, the New York State Bar Association took action upon the question of contingent fees by adopting the report of a special committee which had been previously appointed to consider the abuses of the system. Such committee's report appears at page 99 et seq. of the general report of the association for 1908 (vol. 31). The committee collates the considerations for and against countenancing contingent fees, reaching the conclusion they ought not to be abolished, but can be regulated. The committee proposed, and the association in adopting its report approved, the following amendments to the Code:

"First. After section 66 add a new section to be called section 66a.

"No contract between attorney and client whereby the attorney is to receive any specified proportion of a recovery, or its equivalent, in any action to recover damages for a personal injury or death resulting from negligence, shall be valid unless in writing and signed by all the parties thereto, nor unless the attorney shall have been retained without undue or improper solicitation on his part or behalf. Such contract shall be in duplicate, one of which shall be given by the attorney to the client. All such contracts shall, on motion of the client or of the attorney, or upon the court's own motion, be subject to scrutiny, approval, modification or cancellation by the court in which the action is pending in a summary proceeding to be held in the presence of the interested parties, or upon notice to them at the close of the trial of any such action, or at any other stage thereof; and the court, upon the retirement of the jury, shall inquire of the attorney for the plaintiff whether he has such a contract and shall, in its discretion, require him to produce it. On any such hearing the court may inquire into the circumstances under which such contract was obtained, and into the character of the claim and the nature of the services rendered or to be rendered, and shall pass upon the reasonableness of such contract. If in view of all the circumstances existing at the time of the hearing the court deems the stipulated compensation excessive, it may reduce the same; and if it shall appear that the contract was the result of undue or improper solicitation by or on behalf of the attorney, or was obtained by any fraud, collusion, deception or other misconduct, it may refuse any compensation to the attorney, and it shall certify the facts to the appellate division of the Supreme Court of the department in which the case is pending for such proceedings by way of discipline of the attorney as may be proper. Where such an action is settled before or after trial, the attorney for the plaintiff must apply to the court at special term for an order allowing him the compensation agreed upon in the contract, and upon such application the same proceeding shall be had and the court shall have the same power as in the case of an investigation above provided for. An order shall be entered upon the decision of the court upon any motion or investigation herein provided for, and any contract, or a copy thereof, which has been made the subject of such investigation shall be filed with the clerk of the court at the time of the entry of such order. This section shall apply only to contracts made after it goes into effect.

"Second. Add to section 66 the following:

"No settlement between any of the parties to an

action shall be valid as to them or their attorneys unless consented to in writing by the attorneys for the parties thereto, or, in case of the refusal of any of such attorneys, upon approval by the court in which the action is pending on notice to such attorneys."

The committee explained that "in limiting its proposed regulation to negligence cases your committee has not been unmindful of abuses resulting from contingent fees in other kinds of litigation. But it has been thought expedient not to attempt too much. Should the legislature think best to extend these regulations to all classes of suits your committee would be in hearty accord."

The special committee of the New York State Bar Association consisted of nine eminent members of the Bar, one from each district, and the report was unanimous. The reasons given for the conclusions are cogent and convincing. In our judgment lawyers in general should use all legitimate influence in favor of the adoption of these proposed Code amendments, section 66a to be the broader form, so as to include all classes of actions and proceedings.

#### Carriers; Validity of General Clause Exempting Railroads from Liability for Destruction of Baggage.

[Central Law Journal.]

It is the general rule that no one can contract against his own negligence. But that does not necessarily mean that a carrier may not put in a general clause exempting itself from all liability for injury to baggage from fire. Such a clause will operate in all cases except as to such injuries occasioned by the carrier's negligence. This was the decision in the case of *French v. Transportation Co.* (85 N. E., 4424), where the Supreme Court of Massachusetts held that the limitation of liability for loss of baggage contained in a passenger's ticket is not invalid, because the limitation is general in its terms, without reference to negligence; but such limitation will be enforced as to all losses not resulting from the negligence of the carrier.

The court said: "By the terms of the contract between the plaintiff and the defendant, the defendant is not to be liable for injury to baggage arising from fire. The legal result of such a contract is that it is not liable for fire unless negligent. *Grace v. Adams*, 100 Mass., 505, 97 Am. Dec. 117, 1 Am. Rep., 131; *School District v. Boston, Hartford & Erie Railroad*, 102 Mass., 553, 3 Am. Rep., 502; *Pemberton Co. v. New York Central Railroad*, 104 Mass., 144, 151; *Hoadley v. Northern Transportation Co.*, 115 Mass., 304, 305, 15 Am. Rep., 106. What was said by this court in *Fonesca v. Cunard Steamship Co.*, 153 Mass., 553, 557, 27 N. E., 665, 12 L. R. A., 340, 25 Am. St. Rep., 660, and in *Cox v. Central Vermont Railroad*, 170 Mass., 129, 137, 49 N. E., 97, means that such a contract is invalid, if it is construed to be a contract exempting the carrier when he is negligent. It was not meant that where the contract exempts the carrier generally without reference in terms to the subject of negligence, it is invalid altogether. Such a contract is construed to be a contract exempting the carrier unless the passenger proves that he was negligent."



**Husband and Wife; Right of Husband to Sue for Injury to Wife Occurring Before Marriage and During Their Engagement.**

[Central Law Journal]

The syllabus to the recent case of *Mead v. Baum* (69 Atl., 962), aroused our curiosity. The statement was that no action lies by a husband against a person who has committed a tort upon the woman to whom the plaintiff was engaged to marry at the time of the tort, and whom he subsequently marries.

The question here passed on does not seem to have been passed on by appellate courts with much frequency, as we fail to find any authorities pro or con. The question would admit of no difficulty were it not for the engagement to marry. Facetiously, if not seriously, it might be remarked that if A intentionally injured B's fiancée, he interferes to such extent with B's contract relations. Or, does not B's engagement give him a property interest in his fiancée, which is affected by her injury during the engagement, as well as after the marriage. B would be liable for breach of marriage promise if he broke the engagement. It would seem that where a man solemnly contracts to marry a girl, and her consent closes all avenues to retreat, he should be allowed some recourse against the villain who then proceeds to maim and deface that which has become his by irrevocable contract.

But these observations on our part are purely obiter. The court in the principal case has decided the matter differently, saying: "It is impossible to conceive of any legal principle upon which the action of the husband can be supported. It is true that it is pleaded and proved that at the date of the accident there was a mutual agreement between the plaintiffs to intermarry. But, although the female plaintiff was under contract to marry the male plaintiff, no action by him will lie against the defendant for either preventing the execution of that promise or for causing the promise to be of less value and more burdensome to him." In *Dale et al. v. Grant et al.* (34 N. J. Law, 142), the plaintiff held a contract by which he was to receive all the articles to be manufactured by a certain corporation. The defendant cut the belts and stopped the machinery of the corporation, and so prevented it from furnishing the articles to the plaintiff according to the contract, to the plaintiff's injury. In delivering the opinion of the Supreme Court, Justice Beasley said: "The principle of law which will sustain such an action is this: That a suit will lie against a wrongdoer who prevents in whole or in part a promisor from fulfilling his contract to the loss of the promisee." The chief justice in denying the existence of a right of action in such a situation proceeded to say: "The law does not attempt to give full reparation to all the parties injured by a wrong committed. It is only the proximate injury that the law endeavors to compensate, and the more remote comes under the head of *damnum absque injuria*." He then cites as illustrative of this rule the case of *Anthony v. Slaid*, 11 Metc. (Mass.), 290, where A agreed with a town for a specific sum to support all the town paupers, and he then brought an action against S for beating one of the paupers, whereby A was put to increased expense for the pauper's cure and support. The right of A to an action against S, who had rendered the execution of the contract more onerous, was denied upon

the ground that the damage was too remote and indirect. Other cases were cited in which an insurance company who had contracted to insure the life of a person was not permitted to recover against the defendant who had caused the death of the party insured. The chief justice called attention to the fact that the situations which these cases presented were common occurrences, and yet no precedent could be found, where an action was successfully maintained, which in itself was an almost conclusive argument against its maintainability. It seems clear, therefore, that the existence of a promise to marry, and the fact that the injury to the woman rendered the promise of less value to the man, and entailed upon him expense and care, laid no foundation, and presented no reason for an action against the defendant."

**The Court of Criminal Appeal in England.**

The first Court of Criminal Appeal ever known to the English law and which was authorized by an act of Parliament (7 Edw. VII, c. 23), passed some time since, held its first sitting a few weeks ago. Appeals may now be had on any question of law alone, and, with leave on a question of fact or a mixed question of law and fact or any other ground which appears to the court sufficient, and the convicted person may, with leave, appeal against the sentence pronounced, unless it is one fixed by law.

Unusually wide powers are given this appellate tribunal in dealing with questions of fact and such questions as in our State are usually left to the discretion of the trial judge. The appellate court may affirm a conviction if satisfied "that no substantial miscarriage of justice has actually occurred," no matter how many technical errors have been committed—a most wise and salutary provision, it seems to us, and worthy of adoption everywhere.

It may quash a conviction and direct a judgment and verdict of acquittal or make such modification of the lower court's sentence as seems to it proper whenever satisfied that there has been a miscarriage of justice.

Our English brethren are slow in their way of doing things—especially in matters of law reform. But when they do things, they do them exceedingly well. It seems to us that the plan of this court is excellently conceived, and if the judges who compose it are wise men of broad minds, bold to do the right thing, yet not too bold, its decisions will be of distinct value not only in the furtherance of justice, but in setting precedents.

We have often thought that an ideal appellate court would be one clothed with wide discretionary powers as to remanding a case or finally settling it. Take the case of *Fields v. The Commonwealth*, referred to above (107 Virginia Repts.). How much expense and waste of time could have been saved if the court, instead of reversing the lower court and remanding the case for a new trial, could have simply entered an order declaring the prisoner not guilty and discharging him from custody. This is bound to be the result of a new trial in that case, as any one can see who reads the opinion. The fear which has been expressed in some quarters that there may be too much revision of verdict and that the present jury system may be weakened, is, in our opinion, groundless, if the judges who sit are like most of the English

judges, men learned in the law, without maudlin sympathy for criminals, but with a keen and high sense of right and justice.

The following from the London Law Journal shows some of the work of this court:

"At the sittings of the Court of Criminal Appeal on July 3 one appeal was allowed—*Rex v. Tate*, a conviction under section 61 of the Offenses Against the Person Act, 1861. The ground for quashing the conviction seems to have been that the uncorroborated evidence of an accomplice was the main, if not the only, evidence against the appellant.

"In *Rex v. Hawes*, an appeal against sentence on conviction of larceny, the court reduced a sentence of twenty-one months hard labor to a sentence of twelve months, to date from the conviction. The offense in question had been committed six years ago and before another offense of the same kind (stealing a horse and cart), for which the appellant had been sentenced for four years' penal servitude. It is difficult to follow exactly why the sentence was reduced, whether the penal servitude could be considered as clearing the prisoner's sheet of earlier offenses, or whether the fact of getting penal servitude for stealing one pony and cart entitled the prisoner, as Mr. Justice Darling said, to a reduction 'on taking a quantity.'

"In *Rex v. Martin*, leave was given to appeal against a conviction of highway robbery and to call certain named witnesses on a question of identity. In *Rex v. Coleman*, where leave had been given to call additional witnesses, it was intimated that where counsel decided to call them, arrangement must be made to procure their attendance on the day fixed for the hearing of the appeal.

"In *Rex v. Spencer*, an appeal against a sentence of twelve years' penal servitude in respect of three burglaries, as to two whereof the appellant had been convicted and to the third he pleaded guilty, the court refused to reduce the sentence. There was evidence that the appellant had fitted himself out with an up-to-date set of burglars' appliances; that there had been an epidemic of burglary in Leicester, and that a jimmy found among the prisoner's tools fitted marks made at fifteen houses broken into in Leicester. The appellant seems to have qualified for detention as a danger to society.

"None of the other cases call for notice except *Rex v. O'Sullivan*, an appeal against a conviction for stealing rings. In this case the court followed the rule laid down in *Rex v. Meyer*. The probable test in determining whether there has been a miscarriage of justice is 'that the facts proved would be consistent with innocence and not consistent with guilt.'"—*Virginia Law Register*, August, 1908.

**Bankruptcy.**—A transfer by an insolvent within four months prior to the filing of a petition for the purpose of securing or paying a preexisting debt, without any intent or purpose to affect other creditors injuriously beyond the necessary effect of the security, is held, in *Coder v. Arts*, 82 C. C. A., 91, 152 Fed., 943, 15 L. R. A. (N. S.), 372, to be lawful if not violative of other provisions of the law, and to be no evidence of intent to hinder, delay, or defraud creditors, within the meaning of the Bankruptcy Act.

**Writing for Sale of Land Construed as Option; Insufficient Description of Property; Non-Performance by Vendee; Vendor's Action for Damages; Measure of Damages.**

A writing whereby one party agrees to sell land to another for a price named, but containing no promise or agreement on the part of the latter to purchase or to pay the specified price, is a mere option or offer to sell, and though signed by the promisee, does not imply a promise to accept the offer.

A written promise to sell a stated number of acres of land situated in specified counties of a State named, without other identification, even if it be construed as a contract of sale, is void because it does not specifically and with sufficient certainty describe and identify the land proposed to be conveyed.

An action for damages for a vendee's anticipatory breach of an agreement for the sale of land, can not be maintained by a vendor after the time for complete performance has passed, where it is neither alleged nor proved that plaintiff either offered, or was ready, to perform the contract on his part, and the evidence shows that he never had title to the land.

In an action by a vendor for damages for a vendee's anticipatory breach of a contract for the purchase and sale of land, which the vendor must purchase himself to enable him to fulfill his contract, the measure of damage is the difference between what it would cost the plaintiff to acquire the property and the contract price, not exceeding, however, the difference between the price stipulated and the fair market value.—*Syllabus Rochester Daily Record*, case of *Julia M. Booth, as administratrix, etc., v. William A. Milliken*.

#### **Evidence; Admissions; Reports of Employees.**

In *Atchison, T. & S. F. Ry. v. Burks*, in the Supreme Court of Kansas (July, 1908, 96 Pac., 950), it was held that in an action against a railway corporation for damages for personal injuries, alleged to have been occasioned by a defective coupling apparatus, reports of its car inspectors concerning the condition of the coupler, whether based upon investigations made before or after the injury, can not be received in evidence as admissions by the defendant of the facts stated in the reports, unless such reports have been adopted or promulgated in an authoritative way by some official having power to bind the corporation by admissions.

It was further held that reports of the character described, duly received according to some regulation or customary practice, are admissible in evidence to prove notice to the company of their contents. The court said in part:

"While investigating the condition of its own property and affairs, taking the reports and opinions of its employees upon the subject, and considering what course it ought to pursue, the corporation holds no relation to the general public which enables third persons to seize upon some intermediate step or statement in the proceeding apparently to his advantage and say that a final admission has been made at that point. But let it be conceded that the inspection of coupling appliances on the cars of its trains is a branch of a railway company's business which brings its inspectors in contact with the public, and what is

the result? It is elementary law that to bind his principal the declarations of an agent must be contemporaneous with the event in question, must be made in the transaction of the business committed to his charge and as a part of it, and must be calculated to unfold its nature and to illustrate and explain its character, so that acts and declarations combine and harmonize to form one transaction. During an inspection only those declarations could bind the company which would illustrate, explain and characterize the work of making the inspection. After an inspection has been completed a narration of the things impressed upon the inspector's senses would fill none of the requirements of an admission; and the function of binding the company by admissions not having been delegated to the inspector the making of the report itself, considered as a part of his business, could not include such a consequence.

"The following cases contain discussions of the principles involved which support these views: *Carroll v. East Tenn., etc., Ry.* (82 Ga., 452, 10 S. E., 163, 6 L. R. A., 214), *Powell v. Northern Pacific R. R.* (46 Minn., 249, 48 N. W., 907), *North Hudson County Ry. v. May* (48 N. J. Law, 401, 5 Atl., 276), *Insurance Co. v. Mahone* (21 Wall., U. S., 152, 22 L. Ed., 593), *Wabash R. R. v. Farrell* (79 Ill. App., 508), *C. C. & St. L. Ry. v. Ullom, admx.* (20 Ohio Cir. Ct. R., 512), *Doyle v. St. Paul, Minneapolis & Manitoba Ry.* (42 Minn., 79, 43 N. W., 787), *Verry v. B., C. R. & M. R. R.* (47 Iowa, 549, 551), *Reem v. St. Paul City Ry.* (77 Minn., 503, 80 N. W., 633, 778), *Wellington v. Boston & Maine R. R.* (158 Mass., 185, 33 N. E., 393), *Bessemer C. L. & L. Co. v. Doak* (Ala., 44 South., 627, 12 L. R. A., N. S., 389). The case of *Vicksburg, etc., R. R. v. Putnam* (118 U. S., 545, 7 Sup. Ct. 1, 30 L. Ed., 257) might seem on first impression to be an opposing authority, but it probably does no more than carry out the doctrine expressed in the quotation from *Abbott's Trial Evidence* (sec. 62), that when a report has been adopted and promulgated as that of the corporation it is admissible in evidence against it."

**Benefit Societies.**—A benefit fund contributed by the members of a subordinate lodge for their own use is held, in *State Council v. Emery*, 219 Pa., 461, 68 Atl., 1023, 15 L. R. A. (N. S.), 336, to belong to them; and therefore it is held that, upon the revocation of its charter, the fund can not be taken by the parent body under charter provisions which require the property of the former to be turned over to the latter, but in which no mention is made of money, nor under a statute requiring "moneys" to be turned over, where it also provides that such funds shall be held for the same purposes and intents for which they were received by the subordinate association.

**Act of Bankruptcy.**—The U. S. Circuit Court of Appeals, Ninth Circuit, has held, in the case of *Holmes v. Baker & Hamilton* (20 Am. B. R., 252), that where an execution was levied upon the property of an insolvent partnership after its dissolution the failure to discharge the levy constitutes an act of bankruptcy by all the members of the firm, for which it and all the partners may be adjudged bankrupt.

#### Insurance; Rescission; Evidence.

In the case of *Mutual Life Insurance Company of New York v. Chambliss et al.*, decided by the Supreme Court of Georgia, July 16, 1908, the following syllabus was furnished by the court:

"Where a petition brought against a life insurance company, alleges that a policy of insurance upon the life of petitioner issued by the company was held by a named party under a pretended assignment by petitioner, which assignment was procured by fraud of defendant's agent, who told petitioner, subsequently to his making application for insurance, that the company had declined the application, and where such petition alleged further such facts as tended to show that the company, through its agents, had acted in bad faith in the transaction, the suit being brought to cancel said policy and for damages, as well as for expenses incurred in the litigation, including attorney's fees, the petition was not subject to demurrer on the ground that it did not contain allegations entitling the plaintiff to recover attorney's fees.

"The evidence authorized a verdict finding in favor of plaintiff's claim for attorney's fees.

"Evidence to show what were reasonable attorney's fees under the facts of the case was admissible.

"Where certain portions of the charge are excepted to generally, and in themselves are correct statements of abstract principles of law, this court will not search the record to discover whether or not the giving of the instructions contained in those portions of the charge were authorized under the facts of the case.

"So much of the verdict as awards plaintiff damages as compensation 'for lost time' was unauthorized under the evidence in the case."

#### The Legal Comity of Nations.

[London Law Journal]

There is no more striking characteristic in the political developments of our age than the growing international solidarity of all the greater powers. Throughout the year congresses and conferences, attended by delegates from the countries of Europe and America, have been held in baffling number for the consideration of scientific questions which equally concern all peoples, and during this month there have been two gatherings of the kind concerned with the common law of nations. The International Law Association has been meeting at Budapest, the Inter-Parliamentary Union at Berlin. The one body is composed essentially of lawyers, and devotes itself largely to the study of private international law; the other consists of members of the legislatures, and discusses the improvement of the public relations of states. Both alike emphasize the principle that different nations have important interests which can be served by mutual agreement and concession, and important relations which can be regulated by uniform law. In fact, nations form together a society subject to the same conditions as the society of individuals in one nation. They must have their deliberative assemblies, their legislature, their law courts. Neither the International Law Association nor the Inter-Parliamentary Union are law-making bodies; their function is rather to prepare or crystallize expert opinion, to mold that of the public, and to forecast change.

The delegates at Berlin have been considering the results of the last Hague Conference, and suggesting the aims of the next; and the resolutions they have passed favor the extension of compulsory international arbitration, the limitation of contraband capture, and the abolition of the capture of private property at sea. Towards the two former proposals English policy is altogether sympathetic; upon the last expert opinion and peace-loving sentiment are divided. But the reform of the law of maritime war in many other directions is possible without endangering vital interests, and it is to be hoped that the Maritime Law Conference which is to meet in London next month will be fortified by the resolutions of the Inter-Parliamentary Union to grapple boldly with some of these questions. Less striking to the public eye, but not less useful, have been the deliberations of the lawyers meeting at Budapest, which, while partly dealing with the same questions, has also discussed matters which more directly affect the individual citizen, such as the international enforcement of judgments, marriage and divorce, and unification of the law as to bills of exchange. It is doubtful whether perfect agreement upon all these points can be reached immediately, but both in public and private affairs we are continuously approaching the ideal of the law, and lawyers are working out in their sphere the progress which, as science teaches, comes by securing unity in diversity.

#### **Bailment; Presumption and Burden of Proof.**

In *Johnson v. Perkins*, in the Court of Appeals of Georgia (July, 1908, 62 S. E., 152), it was held that in all cases of bailment, after proof of loss, the burden of proof is on the bailee to show proper diligence, and that an unreasonable, improbable or impossible explanation of an injury, which has been sustained by property of the bailor while in the hands of the bailee, may be equivalent to an admission of liability. In any event, such an explanation, as well as no explanation, may be held by a jury to be a failure on the part of the bailee to show proper diligence towards the property intrusted to his care.

It was actually decided that where a horse is delivered in good condition to a blacksmith to shoe, and shortly afterwards the horse is found still in his possession badly cut, the presumption of negligence on the part of the bailee arises, which will authorize liability for the injury to be affixed on him, unless that presumption be rebutted to the satisfaction of the jury.

#### **Provability of Claims in Bankruptcy; Petition in Bankruptcy Filed Prior to Date Set for Consummation of Contract.**

In the case of *Phoenix National Bank v. Waterbury* (20 Am. B. R., 141), it is held that the present Bankruptcy Act differs from its predecessors, in that the provability of a debt is specifically governed by the date of the filing of the petition. If it be then owing it may be proved; if it becomes due after the filing of the petition, even if before the adjudication, it is not "absolutely owing" and is not discharged.

In the case of a contract of sale to be consummated at a future date when the vendee files a

petition in bankruptcy prior to that date, the vendor at his election may treat the contract as broken by anticipation and assert and prove his claim in bankruptcy for the damages for the breach, or may ignore the repudiation and wait for the date fixed for the consummation of the sale, tender the goods and sue for the purchase price. In the latter case the claim is not discharged by prior adjudication in bankruptcy.

#### **Recent Important Bankruptcy Decisions.**

**Discharge—Objections—Larceny.**—In *re Wolf* (20 Am. B. R., 304), holds that a bankrupt may not be refused a discharge upon the ground that more than a year before the petition in bankruptcy was filed he committed larceny or larceny as bailee against an objecting creditor.

**Claims—Bankrupt Assumed Payment of Notes.** In the case of *In re Girvin* (20 Am. B. R., 320), the District Court, Northern District of New York, held that where a bankrupt has for a valuable consideration assumed the payment of certain promissory notes, his estate is liable for the full amount, and that another is also liable thereon is immaterial.

**Guardian and Ward—Consent to Ward's Change of Domicile—Jurisdiction to Adjudicate Ward a Bankrupt.**—The United States District Court, District of Vermont, has held (*In re Kingsley*, 20 Am. B. R., 427), that where a ward, under guardianship in New Hampshire, with the consent of his guardian, has been a resident of Vermont for six months previous to his filing a petition in bankruptcy therein, the court has jurisdiction, though insolvency proceedings are pending in the New Hampshire courts against the ward.

**Claims—Provability.**—It has been held, in *re Standard Dairy & Ice Co.* (20 Am. B. R., 321), that a claim for commissions and expenses incurred by a trustee named in deed of trust executed by bankrupt in the sale of certain chattels thereunder prior to bankruptcy, is not such a claim as is provable under section 63 of the Bankruptcy Act.

**Act of Bankruptcy—Application for Voluntary Dissolution in State Court Not an Act of Bankruptcy.**—Where a partnership applies under a State law for its voluntary dissolution, and has a temporary receiver of its property appointed, it has been held (*Boyd v. Boyd Fry Stone & China Co.*, 20 Am. B. R., 331), that such a transaction is not equivalent to the general assignment to its general creditors within the meaning of the Bankruptcy Act, and will not support an involuntary adjudication in bankruptcy of the partnership.

**Claims—Creditors—Bankrupt Obtained Goods Without Bill of Lading—Conversion.**—Where, shortly before an involuntary adjudication, a car of eggs was shipped to the bankrupt, to be delivered to him upon payment of a draft attached to the bill of lading, and he, in some way, obtained the eggs from the carrier without payment of the draft, and converted them to his own use, it was held, in the case of *Clingman v. Miller* (20 Am. B. R., 360), that the shipper, who received other property in settlement of his claim, was a creditor with a provable claim at the time of the conversion of the eggs.

**Corporation—State Receiver Became Trustee—Accounting—Summary Order.**—In *Loveless v. Southern Grocer Co., Limited* (20 Am. B. R., 180), the United States Circuit Court of Appeals, Fifth Circuit, has held that a trustee in bankruptcy will not, by summary order, be required to pay into the registry of the bankruptcy court all moneys received by him as a State court receiver of the corporation bankrupt without a hearing upon the question as to whether or not he is entitled to credits for the payments made by him as receiver. While the adjudication of an insolvent corporation operates to suspend the further administration of its estate under the State law, it remains for the State court to settle the accounts of its receiver, transfer the assets and close its connection with the matter; errors committed in so doing could be rectified in due course and in the designated way.

**Involuntary Proceedings—Respondent Entitled to Hearing Prior to Adjudication.**—It has been held, in *re Pickens Manfg. Co.* (20 Am. B. R., 202), that where a petition in bankruptcy is filed against a corporation it is entitled to a hearing upon the question of its insolvency and it is not concluded by a finding of a State court, which appointed a receiver of the corporation upon the ground of its insolvency.

**Debts—Priority—Taxes Due United States.**—In the case of *In re Weiss* (20 Am. B. R., 247), it has been held that a claim for taxes due the United States is entitled to priority of payment, to the exclusion of all reasonable expenses of administration of a bankrupt estate, though the fund originally in the trustee's hands had been reduced by some duly authorized administration expenses, before such claim for taxes was presented.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17. SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

**Edward L. Gies, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *Magdalena Eichner*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. *MICHAEL A. MESS*, Room 318 Gen. Land Office. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,357. Administration. [Seal.] 42-3t

### Legal Notices.

**R. F. Downing and G. A. Berry, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of James Cogan, Deceased.**  
No. 15,580. Administration Docket 89.

Application having been made herein for probate of the last will and testament of said deceased and for letters testamentary on said estate, by *Bartholomew Daly*, it is ordered this 15th day of October, A. D. 1908, that *Michael Cogan* and the unknown next of kin and heirs at law of *James Cogan*, deceased, it appearing to the satisfaction of the court that there are unknown next of kin and heirs at law of said deceased, and all others concerned, appear in said court on Thursday, the 26th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] *WRIGHT*, Justice. Attest: *James Tanner*, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-3t

**H. Ralph Burton, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**Estate of Mary Cook Carter, Deceased.**  
No. 15,525. Administration Docket —.

Application having been made herein for letters of administration on said estate by *Irene Carter*, it is ordered this 14th day of October, A. D. 1908, that *Frank Stevens Carter*, and all others concerned, appear in said court on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] *WRIGHT*, Justice. Attest: *James Tanner*, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-3t

**William A. McKenney, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of *Henry Wells*, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 2d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 13th day of October, 1908. *LAURA R. WELLS AND AMERICAN SECURITY AND TRUST COMPANY*, by *William A. McKenney*, Attorney. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,758. Administration. [Seal.] 42-3t

**Gordon & Gordon, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of *Mary E. Gennet*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. *ISADORE B. COOLEY*, care of *Gordon & Gordon*, Century Bldg. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,400. Administration. [Seal.] 42-3t

Justice blanks of every description for sale at this office.

**Legal Notices.**

Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re The Opening of an Alley in Square 3636, and  
3526, in the District of Columbia. District Court,  
No. 789.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1608 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in squares numbered thirty-six hundred and thirty (3630) and thirty-five hundred and twenty-six (3526), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of an alley in said squares and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 15th day of October, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 4th day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 4th day of November, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 4th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 42-17

P. M. Brown and C. W. Claggett, Solicitors  
In the Supreme Court of the District of Columbia.  
James H. Taylor, Executor and Trustee, et al. v. Lucy A. Cunningham et al. Eq. No. 27,864.

The object of this suit is to reform two deeds recorded in liber No. 601, at folio 442, et seq., and in liber 991, at folio 13, et seq., respectively, of the land records of the District of Columbia, so that the same may be made to pass an estate in fee simple to James H. Taylor, as executor and trustee under the will of Susan Poulton, deceased, to the property described in said deeds namely, all that land and real estate situate in the city of Washington and District of Columbia, being described as follows, part of lot A in George C. Hercules' subdivision in square three hundred and eighty-five (385) as per plat recorded in book W. F., page 140, surveyor's office, D. C., described as follows: Beginning for the same at the southeast corner of said lot, and running thence southwestwardly along the north line of Maryland avenue, thirty-two and seventy-five hundredths (32.75) feet; thence northwestwardly at right angles to said avenue sixty-nine and fifty hundredths (69.50) feet; thence north eight and forty-six hundredths (8.46) feet; thence northeastwardly thirty and fifty hundredths (30.50) feet, to a point in the east line of said lot seventy-two and fifty-nine hundredths (72.59) feet northwestwardly from the point of beginning, and thence southeastwardly along said east line of said lot seventy-two and fifty-nine hundredths (72.59) feet to said avenue and the point of beginning. On motion of the complainant it is this 15th day of October, A. D. 1908, ordered, that the defendant, George W. Nichols, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 42-17

**Legal Notices.**

Coldren & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph E. Savary, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of October, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of October, 1908. JOHN SAVARY, 2329a N. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,498. Administration. [Seal.] 42-87

Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Annie Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. EDWIN C. BRANDENBURG, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,544. Administration. [Seal.] 42-87

Wilton J. Lambert, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Mary A. Moore et al. v. Roy J. Moore et al.  
No. 27,864. Equity Docket 61.

The object of this suit is to have partition made by sale and distribution of the proceeds among the parties entitled thereto of premises known as 616 M street northwest, and also part of original lots 8 and 9, in square 401, and two separate parts of original lot 5, in square 381, all formerly owned by John Moore, and any other part of said square 381, owned by the said John Moore at the time of his death; all of said property being situate in the District of Columbia. On motion of the complainants, it is, this 14th day of October, A. D. 1908, ordered that the defendants, Sarah V. Cary, Jessie Cary, and Charles Cary, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Washington Post before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 42-87

W. A. Johnston, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court  
In re Estate of William M. Starr, Deceased. Probate  
No. 15,102.

The notification as to the trial of the issues in the above entitled cause relating to the validity of the paper writing dated the 12th day of February, A. D. 1908, purporting to be the last will and testament of William M. Starr, deceased, having been returned non est as to Levi Morningstar, Hie Morningstar, Lavinia Bottruff, Louisa Moore, Lizzie Porter, Olla Bowler, Nancy Coleman, William Christie, Charles Morningstar, Rena Morningstar, Fritz Morningstar, Frank Morningstar, Cora Cain, Hannah Long, Ella Meek, Susan Robins, Elliott Christie, Hannah Morningstar, Logan Morningstar and Ogden Morningstar, heirs at law and next of kin of William M. Starr, deceased, "not to be found," it is this 12th day of October, A. D. 1908, ordered that the issues be set down for trial on the 25th day of November, 1908, and a copy of the said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for four weeks in the Evening Star, of Washington, D. C. The substance of said issues is whether said paper writing was procured by fraud or undue influence, and whether said testator was of unsound mind on the 12th day of February, 1908, or if he executed said will whether he afterwards revoked it. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-47



**Legal Notices.**

Henry H. Glassie, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise A. B. Hughes, Deceased.  
No. 14,183. Administration Docket 86.

The notification as to the trial of the issues in this case relating to the validity of the paper writings, dated the 24th day of March, 1899, and the 28th day of June, 1900, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Dr. Arthur De Roaldes, Gladys Connelly, Augustus S. Hutchins, Waldo Hutchins, Pattie Weeks, Harry B. Dick, Charley L. Bowman, William Weeks Hall, minor; Rev. Edward J. Byrnes, Mrs. Kittie White, Dr. Homer J. Dupuy, James M. Dupuy, Mrs. Anna De Roaldes, James R. Randall, Countess Anita Maggolini, Carlo Maggolini, Margherita Maggolini, Woodlawn Cemetery of N. Y. City, Sisters of Bon Secours, Dr. John A. Irwin, Fannie Hewes, Martha Hoge, Charles Hiern, Clara C. Mitchell, Marion G. Wilson, Annie C. Grief, Sumter Calvert, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma L. Hewes Brown, Newton H. Hewes, Frederick S. Hewes, Jr., William H. W. Hewes, Francis G. Hewes, Henry L. Hewes, and Finlay B. Hewes, and the unknown heirs at law and next of kin of Louise A. B. Hughes, deceased, "not to be found," it is this 12th day of October, 1908, ordered that the issues be set down for trial on the 18th day of November, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writings were procured by fraud or undue influence, whether they were executed by said deceased, whether [Seal] they were revoked, whether said deceased was of sound mind, etc. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-41

George H. Lamar, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Mary A. Jones, Deceased.  
No. 15,390. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Virginia B. Jones, it is ordered this 14th day of October, A. D. 1908, that C. Lucian Jones, T. Skelton Jones, Roger ap Catesby Jones, Gertrude L. Melvin, Catesby ap Catesby Jones, Mary Page Thompson, Mattie Moran Jones, Mary Wisner, Llewellyn ap Roger Jones, Katharine Lee Jones, Julian Stuart Jones, Cleo Jones and Page Jones, infant, and all others concerned, appear in said court, on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-31

**SECOND INSERTION.**

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James J. Barnes, Deceased.  
No. 15,503. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sara Boulter Barnes, it is ordered, this 6th day of October, A. D. 1908, that Emma E. Barnes, Chancy R. Barnes, and Nellie Delamater, and all others concerned, appear in said court on Tuesday, the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 41-31

**Legal Notices.**

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lottie F. Holmead, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,495. Administration. [Seal.] 41-31

M. J. Colbert, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas J. Carley, sometimes called John T. Carley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of October, 1908. PATRICK J. DEURY, 210 10th st. N. W.; PATRICK F. CARLEY, 1158 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,524. Administration. [Seal.] 41-31

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Calvin DeWitt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,497. Admn. [Seal.] 41-31

McKenney & Flannery, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph C. Hornblower, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. CAROLINE B. HORNBLOWER, 2030 Hillier Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,518. Administration. [Seal.] 41-31

Perri W. Frisby, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jesse Barnes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. LOTTIE BARNES, 614 4 1/2 st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,584. Administration. [Seal.] 41-31

**Legal Notices.**

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, which was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Mary A. Cook, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 8th day of October, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,762. Administration. [Seal.] 41-3t

H. R. Webb, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Ellen C. Hebb, Deceased. No. 15,515.

Application having been made herein for the probate of the last will and testament of the said deceased, and for letters testamentary on said estate, by Bertha Y. Hebb, it is ordered this 8th day of October, A. D. 1908, that Elizabeth L. Hebb, Hopewell Hebb, Archibald Hebb, Sally B. Hebb, Vernon Hebb, Richard Hebb, Lawson Hebb, and Clinton Hebb, and all others concerned, appear in said court on the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication [Seal] to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 41-3t

S. Duncan Bradley, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 2d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1908. TIMOTHY O'CONNOR, 3319 Quest. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,516. Administration. [Seal.] 41-3t

H. J. Gibbons and T. L. Jeffords, Attorneys

In the Supreme Court of the District of Columbia.  
In re Dissolution of the Kerner & Getts Jobbing-Publishing Company. Equity, No. 23,067.  
ORDER.

It appearing that petition has been filed in this court for a voluntary dissolution of the body corporate, the Kerner & Getts Jobbing-Publishing Company, and it further appearing that such application is accompanied by the accounts, inventories, and affidavit by law required, it is, on motion of Tracy L. Jeffords, attorney for petitioner, this 5th day of October, 1908, ordered that all persons interested in the said corporation, Kerner & Getts Jobbing-Publishing Company, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 20th day of November, 1908, why the said corporation should not be dissolved. And further, that notice of this order be published in The Washington Herald, a newspaper of general circulation in the District of Columbia, and also in The Washington Law Reporter, weekly for three successive weeks, the first publication to be not less than one month before the said 20th day of November, [Seal] 1908, the day fixed for showing cause as aforesaid. HARRY M. CLABAUGH, Chief Justice.

A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 41-3t

**Legal Notices.****THIRD INSERTION.**

R. L. Montague, J. A. Moriarty, and L. A. Bailey,  
Solicitors

In the Supreme Court of the District of Columbia.

Mary V. Mueller, Petitioner, v. Martin Mueller et al.,  
Defendants. No. 27,844. Equity Doc. 61.

The object of this suit is a divorce from the bond of marriage between the petitioner, Mary V. Mueller, and the defendant, Martin Mueller, custody of their infant child and other and general relief. The grounds are adultery, drunkenness, and cruelty. On motion of the petitioner, it is this 1st day of October, 1908, ordered that the defendant, Martin Mueller, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. [Seal] HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. 40-3t

Berry & Minor, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Biagio Giuseppe Corio, otherwise known as Giuseppe Corio and as Leo Corio, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of September, 1908. HUGH B. ROWLAND, Colorado Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,506. Administration. [Seal.] 40-3t

Newton & Gillett, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of John Bryson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. ELIZABETH T. BRYSON, 714 12th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,417. Administration. [Seal.] 40-3t

Lambert & Yeatman, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Catharine E. Gaskins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS P. SHOEMAKER, 614 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,398. Administration. [Seal.] 40-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Lambert & Yeatman, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Daniel F. Taylor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. LOUIS P. SHOEMAKER, 612 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,519. Administration. [Seal.] 40-St

**Wm. M. Lewin, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Eliza J. Hyland, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 28th day of September, 1908. CHARLES H. HYLAND, 885 22d st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,477. Administration. [Seal.] 40-St

**Frank S. Bright, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Augusta Louisa Weisenborn, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. FRANK S. BRIGHT, Colorado Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,521. Administration. [Seal.] 40-St

**C. Clinton James, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Margaret A. Gibson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 1st day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 1st day of October, 1908. MAGGIE E. LITTLE 1011 E st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,348. Administration. [Seal.] 40-St

**Henry C. Stewart, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Ann Eliza Stewart, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 30th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of September, 1908. HENRY C. STEWART, 617 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,514. Administration. [Seal.] 40-St

**Legal Notices.****George E. Fleming, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Sarah J. Lewis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 28th day of September, 1908. UNION TRUST COMPANY, by George E. Fleming. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,573. Administration. [Seal.] 40-St

**William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Maria Williams, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 19th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 29th day of September, 1908. AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,561. Administration. [Seal.] 40-St

**SIXTH INSERTION.****C. H. Hillyer, Solicitor**

**In the Supreme Court of the District of Columbia.**  
Virginia M. Davis, Complainant, v. The Unknown Heirs, Devisees, and Alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, Defendants. No. 27,933. Equity Dec. —

The object of this suit is to declare complainant's title perfect, by adverse possession, to the following described lands, premises, easements, and appurtenances, in the District of Columbia and city of Washington: Part of original lot numbered seven (7), in square numbered nine hundred and four, contained within the following metes and bounds, viz, beginning for the same at a point distant twenty-four (24) feet four (4) inches north from the southwest corner of said lot and running thence north along the line of Seventh street east, eighteen (18) feet eight (8) inches; thence east, one hundred and nine (109) feet one (1) inch; thence south, eighteen (18) feet eight (8) inches, and thence west, one hundred and nine (109) feet one (1) inch, to the place of beginning. On motion of the complainant, it is, this 7th day of August, 1908, ordered that the defendants, the unknown heirs, devisees, and alienees of Jonathan Slater, Benjamin Grayson Orr, and Elias B. Caldwell, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. (Signed) JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 14-21, sept. 11-18, oct. 9-16.

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WASHINGTON, D. C. - - - - - OCTOBER 23, 1908

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### DECISIONS BY THE COURT OF APPEALS.

Practice; Bill of Exceptions; Time of Settlement; Prolongation of Term.

In Howard v. International Trust Company of Maryland, a motion was made by the appellee to strike the bill of exceptions from the transcript of record and affirm the judgment, on the ground that the bill had been settled out of term. It appeared that the trial had been concluded and verdict returned just four days before the close of the January term, and as the rules of the court below provide that the judgment shall not be entered until the fifth day after the verdict, the judgment was entered on the first day of the April term. The trial term was not prolonged by adjournment for the purpose of settling the bill of exceptions, but the bill was presented for settlement within thirty-eight days after the date of the judgment. The case involved the construction of Common Law Rules 54 and 55 of the court below. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holds that the bill of exceptions must be settled during the trial term, which may be extended by adjournment for that purpose;

and as the bill in this case was not so settled it is ordered stricken out and the judgment affirmed.

### Contracts; Act of Congress; Resort to Extrinsic Evidence.

In Cortelyou v. U. S. ex rel. Thorpe, the appeal was specially allowed from an order of the court below denying a motion by the respondent, the Secretary of the Treasury, to discharge the rule in a proceeding for mandamus to compel payment of a Congressional appropriation. It appeared that Congress made an appropriation of \$10,000 to purchase from the relator an historical manuscript prepared by him, on condition that he should prepare and furnish an index of the work, read the proof, etc. The Public Printer certified that the conditions had been performed, but payment was refused by the respondent, on the claim that the relator had represented that the work would contain certain editing and revision by a third party, and that this had been omitted from the manuscript furnished. The act of Congress was silent as to any such editing and revision. The Court of Appeals, in an opinion by Mr. Justice Robb, affirming the order of the court below, holds that the act of Congress was free from ambiguity, and must be taken to express the contract between the parties; that upon the Public Printer certifying that the conditions of the appropriation had been performed by the relator, the duty of the respondent to make payment was a purely ministerial one, and upon his refusal to do so mandamus would lie to compel payment.

### Equity; Reference of Cause to Auditor.

In Easter v. Ralston the appeal was from an order of the court below, entered over the objection of the appellant, referring the cause to the auditor. A petition was filed by the appellant seeking to hold the appellee liable for the malversation of his co-trustee on the ground of his alleged neglect of duty, whereby the trust fund had been lost. The answer put in issue the charge of negligence, and further claimed special exemption from liability for any default of the co-trustees under the terms of the order of appointment. To this answer a replication was filed; and on the petition of the trustee the cause was, over appellant's objection, referred to the auditor to state the account and to take testimony and report to the court as to the alleged acts of negligence of the trustee. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the order appealed from, holding that it was the duty of the court itself to determine the issues raised by the pleadings, upon evidence to be taken, and to lay down the principles to be applied in stating any account that might be ordered taken, and this duty could not be delegated to the auditor.

**Court of Appeals of the District of Columbia.**

GEORGE E. HOWARD, APPELLANT,

v.

INTERNATIONAL TRUST COMPANY OF  
MARYLAND.**PRACTICE; BILL OF EXCEPTIONS; TIME FOR SETTLEMENT; PROLONGATION OF TERM.**

**Trial was had and verdict returned at the January term of the court below. Under the rules of that court judgment could not be entered until the fifth day after the verdict was returned, and therefore the day on which the judgment was entered, being the fifth day after verdict, was the first day of the April term. The trial term was not prolonged for settlement of the bill of exceptions. Held, that a bill of exceptions settled after the expiration of the trial term must be stricken out as having been settled out of term, and the judgment affirmed.**

No. 1914 Decided October 20, 1908.

**HEARING** on motion by the appellee to strike out bill of exceptions and affirm judgment. **Granted.**

Mr. W. C. CLEPHANE for the motion.

Mr. B. H. WARNER, JR., and Mr. E. BEVERLY SLATER, opposed.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The appellee moves to strike out the bill of exceptions in the transcript of the record and to affirm the judgment appealed from.

It appears that the trial of the cause was had during the January term of the Supreme Court of the District, resulting in a verdict returned April 1, 1908. Under the rules of that court judgment is not to be entered upon a verdict until five days thereafter. The fifth day thereafter was the 7th day of April, 1908, which was also the first day of the new or April term. The judgment was entered on that day and notice of appeal given. Appeal bond was filed on April 9, and on May 21 the appellant submitted a bill of exceptions asking that it be settled now for then as of the day of trial on which the same had been noted. This was settled and signed by the trial justice on the 22d "nunc pro tunc—the time of the noting thereof on the trial." These exceptions had been noted during the trial, as required by the rules of court, but no order was made extending the trial term for the purpose of settling the bill, as provided in Rule 54 of the Supreme Court of the District. By the terms of section 1 of that rule the bill of exceptions must have been settled during the term at which the trial was had to give it effect, but by section 2, before amendment as hereafter noted, the term might be prolonged not more than 30 days, exclusive of Sundays, for the purpose. *Brown v. Bradley*, 6 App. D. C., 207; 23 Wash. Law Rep. 293. In that case issues formed on a caveat to the probate of a will had been certified for trial by jury from the Orphans' Court; the trial was had and verdict thereon returned December 24, 1894. Motions for new trial and in arrest of judgment were filed and continued to the January term, 1895, and were overruled on January 12. On January 22, the finding of the jury was certified to the Orphans' Court in due course of procedure. On February 1, the motion in arrest of judgment was renewed in the Orphans' Court and again overruled. The exceptions had

been noted during the trial of the issues in the Circuit Court, but no bill had been offered for settlement and there had been no prolongation of the term, as provided in section 2. On March 12, 1895, a bill was prepared and submitted to the trial justice, who declined to settle it on the ground that it was beyond his power, the term having expired, notwithstanding the continuance of the motion for new trial and in arrest of judgment to the succeeding term. A petition for mandamus to compel the settlement of the bill was denied.

Since that decision the rules have been amended. Section 2 of Rule 54, which provides for an extension of the term for thirty days, exclusive of Sundays, was amended to read as follows: "Sec. 2. The bill of exceptions must be settled before the close of the term, which may be prolonged by adjournment in order to prepare it, but not longer than thirty-eight days, exclusive of Sundays, save in case of a trial begun during a term, in which case the trial justice may extend the term in his discretion in order to prepare a bill of exceptions." Rule 55 provides that every bill shall be prepared and submitted to opposing counsel. If not settled before the jury retires notice shall be given to opposing counsel of the time at which it is proposed the bill of exceptions shall be settled, and the same submitted to him at least eight days, exclusive of Sundays, before the time designated in said notice for settling the same. "And the said exceptions shall be presented to the court within thirty-eight days, exclusive of Sundays, after judgment shall have been entered therein, unless the trial justice shall for good cause shown extend the time for the presentation thereof."

In *Jennings v. Railway Co.* (31 App. D. C., 173, 175; 36 Wash. Law Rep. 253) it was said: "Rule 55 was not intended to affect the operation of Rule 54. Its purpose is to secure a fair settlement of a delayed bill of exceptions by requiring the delivery of a copy of the proposed bill of exceptions to the opposing party, with notice of the time of its intended submission to the trial justice for its settlement. It operates within the term during which the trial was had, and within the term of its prolongation when made in accordance with the provisions of section 2 of Rule 54." In that case the verdict was returned and the judgment entered within the same term. There was no prolongation of the term for the purpose of settling the bill of exceptions, which was not given notice of and presented until after the beginning of the succeeding term. The judgment had been entered on December 20 and the term expired on December 31. The bill of exceptions was stricken out as settled after the time allowed therefor.

In opposition to the motion it is argued that as the judgment in this case was not actually entered until the succeeding term, the appellant had thirty-eight days thereafter within which to have his bill settled under Rule 54 without having had the trial term prolonged for the purpose. To maintain this proposition it is contended that "term," as used in section 2 of Rule 54, must be considered to mean the "judgment term," which would harmonize it with Rule 55. There is no warrant for this construction. The term evidently meant in section 2 was the trial term. It provides that the bill of exceptions must be settled before the close of the term, which may be prolonged not longer than thirty-eight days, save in case of

a trial begun during the term, but not concluded until after the expiration of the term, in which case the trial justice may extend the term in his discretion in order to prepare a bill of exceptions. It can not be questioned that the word "term," as first used, meant the term at which the trial was had, and it seems perfectly clear that the same term was meant throughout the section. The mere fact that the judgment in this case was entered at the succeeding term does not affect the requirement of section 2 of Rule 54. Knowing that the trial term would end before the judgment was entered, it was the duty of the appellant to ask its prolongation for thirty-eight days in order to enable him to settle his bill of exceptions. Probably under Rule 55 the prolongation asked for might have been for such additional time as would extend it for thirty-eight days, exclusive of Sundays, after the date of the actual entry of the judgment.

We see no ground for changing the conclusion announced in *Jennings v. Railway Co.*, supra. The bill of exceptions having been settled out of term without a prolongation of the same for the purpose, must be stricken out. Without a bill of exceptions, there is no ground upon which the judgment appealed from could be reversed. It is therefore affirmed, with costs.

Motion sustained; bill of exceptions stricken out, and judgment affirmed.

For the reasons given in the foregoing opinion, the same motion, in No. 1915, between the same parties is sustained, and judgment will be affirmed as directed in that case.

**Concealment of Assets by Bankrupt—Taken Out of Jurisdiction—Liability of Attorney Who Aided Concealment.**—In the case of *Clay v. Waters* (20 Am. B. R., 561), it appears that the bankrupt refused after adjudication to make disclosure of his assets and within the eight months succeeding took \$40,000 out of the jurisdiction of the court and deposited it in fictitious names subject among others to his own draft. It was held to be sustained by the evidence and that title thereto passed to his trustee, but that title to money and jewelry found upon his body at his death more than eighteen months after his adjudication, did not so pass. It also appeared that after the death of the bankrupt his confidential attorney, with knowledge of the facts and the bankruptcy proceedings, in company with the deceased bankrupt's widow and mother represented that they were the persons to whose credit the money was deposited, and procured payment thereof to them. No satisfactory explanation was given of the fact that soon thereafter the attorney's bank account assumed an importance and magnitude unknown before, and he soon thereafter began making unprecedented purchases of real estate and loans on interest bearing notes secured by mortgages on real estate, and the proof showed that they could have been made with no other moneys. It was held that he must convey said real estate to the trustee in bankruptcy for the benefit of the estate.

**Witness—Payment of Fees.**—In *re Marcus* (20 Am. B. R., 397), holds that the husband of a bankrupt wife can not be compelled to testify before a referee without payment of his lawful fees.

## Court of Appeals of the District of Columbia.

ALICE TYLER EASTER, APPELLANT,

v.

JACKSON H. RALSTON, TRUSTEE.

### EQUITY; REFERENCE TO AUDITOR.

1. The auditor is not a judicial officer, to whom, without the consent of the parties at least, the determination of the question in controversy between the parties can be delegated.
2. To a petition filed, seeking to hold a trustee liable for the default of his co-trustee on the ground of his gross neglect of duty, whereby the loss of the trust fund had occurred, the trustee answered denying the negligence charged, and also claiming special exemption from liability for his co-trustee's default under the terms of the order of his appointment. Replication was filed, and thereafter the court, on motion of the trustee and over the objection of complainant, referred the case to the auditor to state the account of the trustee, and also to take testimony and report as to the alleged acts of negligence of the trustee. Held, reversing this order, that it was the duty of the court itself to determine the questions put in issue by the pleadings, upon evidence to be taken in support thereof, and to lay down the principles for stating any account that might be ordered taken, and this duty could not be delegated to the auditor.

No. 1897. Decided October 21, 1908.

APPEAL (specially allowed) from an order of the Supreme Court of the District of Columbia, in Equity, No. 7907, referring a cause to the auditor. Reversed.

Mr. LEIGH ROBINSON and Mr. CONWAY ROBINSON for the appellant.

Mr. EUGENE A. JONES for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is a special appeal that has been allowed from an order of the Equity Court referring the cause to the auditor, over the objection of the petitioner.

The bill contains a lengthy recital of the facts on which the claim of the petitioner is founded, but as the merits of the controversy are not now involved a brief statement will be sufficient for the purposes of this appeal.

By the will of Mary McPherson in the year 1873 a trust was created for the benefit of certain persons, but by the death of all of them except the petitioner she has become the sole beneficiary. Two trustees were nominated in the will, one of whom died and the other was permitted to resign the trust in 1882, after accounting for the funds administered. The bulk of the trust property consisted of real estate. In 1882, a single trustee was appointed, "subject to the control and order of the court in matters touching the trust."

This trustee was removed October 17, 1890, for default, and Thomas E. Waggaman and William H. Raleigh were appointed co-trustees, each giving a separate bond in the sum of \$10,000. Some funds in the registry of the court were turned over to them, and by consent of the beneficiaries, they were authorized to sell the real estate, and did sell the same for \$17,560; \$2,500 was paid in cash by the purchaser and three notes executed for the remainder, payable in three, six, and nine years, respectively, with 6 per cent interest. These were secured by first mortgage on the property conveyed. March 7, 1899, Raleigh was removed on



petition of the beneficiaries and Jackson H. Ralston was appointed in his stead, giving bond in the sum of \$10,000. Waggaman became a bankrupt. On petition of Ralston he was removed and H. L. Rust substituted. It is charged in the petition, filed March 3, 1906, that the trust fund of about \$17,000 has been wholly or chiefly lost. That mortgagees to secure investments of the same have been released on loans that had been made of the funds to persons in the employ of Waggaman, and for his benefit, etc. It is not charged that these funds came into the actual possession of the trustee Ralston, but his liability therefor is founded on charges of gross negligence, by reason of which his co-trustee was permitted to use and to embezzle the funds.

The prayers are (1) for an accounting by Waggaman and Raleigh of the administration of the trust by them; (2) that Waggaman and Ralston shall account for the whole trust estate during their administration as co-trustees, and that each shall be held liable for any and all loss, deficiency, etc., and for every improper investment made during their administration; (3) that defendant Ralston shall account for the whole trust estate since the removal of Waggaman. The petition sets out in detail the history of the proceedings and the various acts in regard to the disposition of the funds.

Waggaman died without answering the bill, and Raleigh, whether served with process does not appear, has not answered. Ralston answered admitting the general facts alleged in the bill as to the history of the trust and so forth. He alleges that the decree appointing Raleigh, whom he succeeded, provided that "each trustee shall be responsible only for his own default"; that no funds came into his possession; that Waggaman, who had control of the fund, was a man of high character, enjoying the confidence of the community and particularly that of petitioner, who relied upon him; that he had no knowledge of, and no reason to suspect the malversation of Waggaman; and that he has been guilty of no negligence, and is not liable for the default of Waggaman. Replication was entered by the petitioner to this answer. Before the taking of testimony, Ralston moved for a reference to the auditor to take his account, which motion was denied March 7, 1907. It was renewed in March 1908, and on the 23d day thereof, over the objection of the petitioner, an order was passed referring the cause to the auditor to state the account of Ralston as trustee, and providing that in stating said account the auditor shall take into consideration the prayers of the petition, "and he shall inquire into the alleged acts of negligence and omission of said Jackson H. Ralston set out in the aforesaid petition . . . and he shall take and report to this court such testimony as may be adduced before him either by the said Jackson H. Ralston or the said Alice Tyler Easter, and report the result of his inquiry to this court for such action as it may deem proper and appropriate."

The single question involved is whether it was competent for the court, without the consent of the parties and against the expressed wish of the petitioner, to refer the cause to the auditor before a hearing upon the pleadings and evidence and an adjudication of the matters put in issue.

This is not the case of an ordinary proceeding against a trustee for an account of the adminis-

tration of an estate, where the trust relation and duty, as well as the existence and possession of the fund have been admitted or established, and nothing but the statement of an account is required, the items of which, when reported, may form the subject-matter of exceptions by a dissatisfied party. The relation of trustee is admitted, but it is denied that any funds came into the possession of the trustee for which it is his duty to account. Nor is the petition directed to obtaining an account of trust funds actually in possession of and administered by him. On the contrary, it seeks to hold him liable for the malversation of his cotrustee on the ground of his alleged neglect of duty whereby the loss of the fund was permitted to occur. The answer, to which replication was made, puts this charge of negligence in issue, and further claims special exemption from liability for any default of the cotrustee under the terms of the order of appointment. Thus was raised a preliminary question necessary to be determined before the account can properly be taken. It is whether the petitioner is entitled to the relief prayed; that is to say, whether the trustee is bound to account at all, as prayed in the petition.

The auditor is not a judicial officer to whom, without the consent of the parties at least, the determination of this question can be delegated. His function is that of a master to whom is ordinarily assigned the duty of stating items of indebtedness and credit between parties and ascertaining any balance that may be due. As has been said by the Supreme Court of the United States: "It is not within the province of a master to pass upon all the issues in an equity case, nor is it competent for the court to refer the entire decision of the case to him without the consent of the parties. It can not, of its own motion, or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented, and devolve that duty upon any of its officers." *Kimberly v. Arms*, 129 U. S., 512, 524.

In that case a reference had been made by consent, which presented a different question, but the statement was made of the general rule, governing in cases where there has been no consent to the reference, that has always prevailed. The rule in all cases of reference is thus laid down in an excellent treatise on equity procedure:

"Before a cause is referred to a master to take and state an account between the parties, the following preliminary steps should be taken, as *conditions precedent to the reference*, viz: (1) The pleadings should be perfected and the cause put at issue; (2) *the parties should take the proofs upon the issues made by the pleadings*, as fully as the nature of the case will allow; (3) *the cause should be regularly set down for hearing*; (4) the cause should be regularly heard upon the *pleadings* and the evidence by the court; (5) upon such hearing *the court should pass upon all the issues made by the pleadings*, and should enter an interlocutory decree *declaring the rights of the parties, and also settling and declaring the principles upon which the account is to be taken*; (6) the decree should refer the cause to a master to take and state the account in accordance therewith and report to the court, and all other matters should be reserved until the coming in of the report; (7) the order of reference *must be founded upon, and can not be more extensive than the*

*pleadings and the proofs.*" 2 Bates Fed. Eq. Procedure, sec. 753. See, also, 3 Gr. Ev., sec. 332; Neale v. Hagthorp, 3 Bland Ch., 551, 561; Life Ins. Co. v. Grant, 3 MacArthur, 42, 48, and many other authorities cited in the brief for appellant. Our attention has been called to no authority to the contrary.

In the state of the case, as presented by the record, we are of the opinion that it was the duty of the court to determine the questions put in issue by the pleadings of the parties, upon evidence to be taken in support thereof, and to lay down the principles for the guidance of the auditor in stating whatever account might then be ordered to be taken.

For the reasons given the order will be reversed with costs, and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

GEORGE B. CORTELYOU, SECRETARY OF  
THE TREASURY, APPELLANT,

v.

UNITED STATES OF AMERICA ON THE  
RELATION OF FRANCIS N. THORPE.

CONTRACTS; ACT OF CONGRESS; INTERPRETATION;  
MANDAMUS.

1. A written contract, the terms of which are free from ambiguity and import a complete legal obligation, is conclusively presumed to record the intention of the parties thereto in the absence of fraud, accident or mistake.
2. An act of Congress appropriated \$10,000 for the purchase from T. of the manuscript for a new edition of the charters, constitutions, and organic laws of all the States, etc., and any acts of Congress relating thereto, "prepared by him," on condition that T. should "prepare a complete index of the work and do all proof reading in connection with the preparation, printing and publication thereof." The Public Printer certified to the fact that T. had furnished a manuscript answering the description of that mentioned in the act, and had complied with the conditions annexed to the appropriation. The Secretary of the Treasury refused payment on the ground that, prior to the passage of the act, T. had represented that the work offered for purchase would contain certain editing and revision by one S., and that this was not included in the manuscript furnished by T. Held, that the intent of Congress in making the appropriation was to be determined by the language of the act itself; that, so construed, it was the clear duty of the Secretary of the Treasury, upon the Public Printer certifying that the conditions annexed to the appropriation had been performed by T., to make payment to him of the sum appropriated; that such duty was ministerial, and upon refusal of the Secretary to perform it, mandamus would lie to compel him to make such payment.

No. 1912. Decided October 21, 1906.

APPEAL (specially allowed) by respondent from an order of the Supreme Court of the District of Columbia, at Law, No 50,034, denying a motion for the discharge of a rule issued upon a petition for mandamus. Affirmed.

Mr. D. W. BAKER and Mr. STUART MCNAMARA for the appellant.

Mr. GEO. E. HAMILTON, Mr. JOHN W. YERKES and Mr. HAMPTON L. CARSON for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from an order of the Supreme Court of the District, and appellant's conten-

tions are contained in the following assignments of error:

"First. The court erred in overruling the motion to dismiss the petition and deny the writ of mandamus.

"Second. The court erred in holding that he had jurisdiction to try the issue attempted to be raised by the traverse of relator.

"Third. The court erred in holding that the action herein lies against the Secretary of the Treasury."

The appellee, petitioner below, according to the averments of his petition, which he filed December 12, 1907, had for many years devoted himself to special studies and work in "State and Constitutional law, colonial charters, constitutions, and organic laws of the United States, and after eleven years of labor, devoted to the collaboration of material," presented to Congress a petition praying for the publication of a new edition of the charters, constitutions, and organic laws of the United States. At the same time he presented a manuscript prepared by himself, which he represented to Congress would supply the omissions in the work known as the "Ben. Perley Poore Compilation." His efforts before Congress resulted in the following appropriation being inserted in the Sundry Civil Expenses Appropriation Act for the year ending June 30, 1907 (34 St. at L., pt. 1, 759):

"Charters and Constitutions: For the purchase from Professor Francis N. Thorpe of the manuscript for a new edition of charters, constitutions, and organic laws of all the States, Territories, and colonies now or heretofore forming the United States, and any acts of Congress relating thereto, prepared by him, ten thousand dollars: *Provided*, That he shall prepare a complete index of the work and do all proof reading in connection with the preparation, printing, and publication thereof, and the Public Printer shall print and bind six thousand copies of the work, of which two thousand copies shall be for the use of the Senate and four thousand copies for the use of the House of Representatives."

This act was approved June 30, 1906. Thereafter petitioner, desiring information as to the method of payment, addressed the Secretary of the Treasury through a letter written by a Member of Congress, and on August 6, 1906, received information from the Secretary "that the Public Printer should be communicated with in the matter, upon whose certificate of receipt of the manuscript and index, and statement that the work thereon has been performed, as required in the law, payment can be made." On August 8, 1906, the Public Printer, responding to a letter from petitioner, said: "This appropriation is to be expended by the Treasury Department, upon a certificate from the Public Printer that the manuscript and index have been furnished, and that the whole matter has been proof read." Thereafter, on May 2, 1907, petitioner addressed the following communication to the Public Printer.

"MT. HOLLY, N. JERSEY, May 2, 1907.  
Hon. CHAS. A. STILLINGS, Public Printer,  
Washington, D. C.

DEAR SIR: I hereby transmit and deliver to you the manuscripts of 'Charters, Constitutions, and Organic Laws,' the purchase of which from me was provided for by act of Congress of 30 June, 1906. Said manuscripts are complete, being a true and correct copy of the organic acts they purport to

embody. Each and every act has been verified by me from authentic and official source or sources, said source or sources being cited and plainly shown in notes accompanying said manuscripts, copy herewith submitted and delivered. I hereby take occasion to declare that the aggregate manuscripts herewith transmitted contain all and every said charters, constitutions and organic laws, or appropriate citation thereof, said citation or citations being of supplementary and subordinate acts, a knowledge of which may be desired as explanatory, in some sense, of charters, constitutions, and organic laws as referred to in said act of Congress above cited.

I believe that the manuscripts comprise the complete, authentic and up-to-date transcript of the original acts, severally and as a whole. The entire work has been in preparation since September, 1885, and has received my personal attention, revision, and labor. The manuscripts comprise 5,000 pages, more or less. Yours very truly,  
(S'g'd) FRANCIS N. THORPE."

Upon the delivery of the above communication, accompanied by the manuscript therein described, the Public Printer on the same day delivered to the petitioner the following receipt:

"May 2, 1907.

Received of Professor Francis N. Thorpe, of Mount Holly, N. J., manuscript copy, said to contain 'charters, constitutions, and organic laws,' except the index, subject to the conditions provided for in the act of June 30, 1906 (pamphlet laws of the first session, Fifty-ninth Congress, page 759).

(S'g'd)

CHAS. A. STILLINGS,  
Public Printer."

Petitioner thereafter corrected and returned to the Public Printer the galley proofs and page proofs of the work, and prepared a complete index thereof, and read and returned the proof in connection with the preparation, printing, and publication thereof, and the work was set up in type in five volumes. Thereafter on September 9, 1907, petitioner received the following communication from the Public Printer:

"OFFICE OF THE PUBLIC PRINTER,  
WASHINGTON, September 9, 1907.

DEAR SIR: I have this day forwarded to the Secretary of the Treasury a certificate that you had furnished the manuscript for a new edition of charters, constitutions, and organic laws of all the States, Territories, and colonies now or heretofore forming the United States, and any acts of Congress relating thereto prepared by you; that you had prepared a complete index of the work, and that you had read proof in connection with the preparation, printing, and publication thereof. Very truly yours,

(S'g'd)

CHAS. A. STILLINGS,  
Public Printer.

Prof. Francis N. Thorpe, Indian Arrow Vineyards, North East, Pa."

Thereafter petitioner wrote the Secretary of the Treasury, and on October 30, 1907, received a communication to the effect that, the act being silent as to the official certification to the Treasury Department as a basis for payment, the Department would await further consideration of Congress. On November 8, 1907, in response to further communications from petitioner, the Treasury Department informed him that it had

been decided to await the approval of such person or persons as Congress might designate to pass upon the question as to whether or not he had completed the work as provided. Thereupon petitioner personally interviewed the Secretary of the Treasury and was informed that objections had been urged with that official from two persons who did not think the manuscript complete. The Secretary declined to state who made the objections or what they were.

The rule to show cause was issued on this petition, and respondent made answer. In this answer it is stated that, desiring a new edition of charters, constitutions, and organic laws of all the States, Territories, and Colonies which would be sufficiently chronological and which would contain complete information on the subject at the present time, Congress commenced negotiations "to purchase a manuscript for a new edition of the charters, constitutions, and organic laws, which would supply this desideratum, and petitioner herein advocated the purchase of the work which he represented would be definitely and distinctly a new edition along these lines, and which he had been preparing for some time, and which, before its final submission to the Government in the event of its purchase by the Government, would receive the benefit of the collaboration with the petitioner of Dr. Benjamin F. Shambaugh, Professor of History in the University of Iowa, and a historical scholar who had given much attention to specialization on these subjects. Accordingly, the work, treatise, or manuscript represented by the petitioner herein to Congress as the work to be delivered to the Government in the event of its purchase thereof was not any manuscript for a new edition of the charters, constitutions, and organic laws, nor any edition thereof which the petitioner might have, but was a definite, distinct, particular manuscript then represented and described to Congress by petitioner at the time of this negotiation, prior to the passage of the act approved June 30, 1906; it was an individualized literary entity, offered on the one side by petitioner as for sale, and being considered by Congress on the other side as for purchase. In it was to be found a new, and therefore complete, edition of all the charters, constitutions, and organic laws of the States, Territories, and colonies now or heretofore forming the United States and any acts of Congress relating thereto. Furthermore, as above set forth, this particular work represented by petitioner to Congress as the work offered for sale was to contain certain editing and revision by Professor Shambaugh. Such was the particular manuscript which was offered by petitioner for sale to Congress, and constituted a specific and distinctly featured literary entity, and being both a new edition of this old subject and one as to some parts of which Professor Shambaugh had collaborated with petitioner, and the whole prepared by him. This being offered for sale to Congress, the Congress relied upon the purchase and the acquisition of this specific thing represented by petitioner, and agreed to purchase the same and appropriated \$10,000 therefor."

The answer admits the sending to the Secretary of the Treasury by the Public Printer of the certificate described in said letter of September 9, 1907, from the Public Printer to petitioner, but denies that the work submitted to the Public Printer and to which the certificate referred "was

the identical work presented to Congress by petitioner and agreed upon to be purchased and delivered." The answer further sets forth that after the delivery of the manuscript to the Public Printer, "it was discovered by Honorable Albert F. Dawson, Member of the House of Representatives from the State of Iowa, with whom as the representative of Congress the negotiations for the purchase of petitioners work were had, and who was thoroughly familiar with all the details leading to the passage of the act appropriating ten thousand dollars, and who was instrumental in securing the passage thereof, and who, in that behalf, represented the Congress in its determination to purchase a certain specific work from the petitioner, and to whom a definite outline of the particular manuscript was exhibited at the time of the making of the contract of purchase, which later he, the said Dawson, succeeded in having embodied in the aforesaid act on the part of Congress, that the manuscript submitted to the Public Printer and received by him was not the identical manuscript, nor the identical, specific, individual thing which Congress agreed to buy and for whose purchase it appropriated ten thousand dollars. The manuscript delivered to the Public Printer was not the new edition represented to the Congress, and the collaboration of Prof. Shambaugh was wholly omitted in the manuscript delivered. The act of Congress above referred to being silent as to a provision for official certification that the work as delivered is the identical work agreed to be purchased, this respondent was notified by Representative Dawson on behalf of the Congress that the work as submitted by the petitioner to the Public Printer was not the identical work submitted to Congress and agreed to be bought by it, and that the same was not accepted. Upon thus being notified that petitioner had not complied with the act of Congress, your respondent declined to make payment as set out in said letters."

The answer further denies that any duty is imposed upon the Public Printer to determine whether the manuscript delivered is the manuscript offered for sale and agreed to be purchased. The answer concludes with a disclaimer that the respondent, "or any one for him, has attempted to sit as a literary or historical expert, or that he has attempted to criticize any particular features of the work submitted by the petitioner . . . but that he declines to pay the money appropriated by the act solely because he is informed and believes that petitioner has not complied with the act in delivering the specific and particular manuscript referred to in the act."

To this answer a demurrer was interposed, and upon the demurrer being overruled the answer was traversed. Thereupon respondent moved for the denial of the writ, the discharge of the rule, and the dismissal of the petition. The motion was denied, and this special appeal followed.

The first contention of appellant is that the court was without jurisdiction to entertain this suit because he says the object of the suit is to require the payment out of the Treasury of the United States of a sum of money as a consideration of the contract which exists between the appellee and the Government.

The appellee, on the other hand, insists that the act of Congress being free from ambiguity contains the sole evidence of the contract, and that the averments in the petition and the admissions

of the answer showing full compliance on the part of petitioner with the provisions of the act, the respondent is deprived of any discretion in the matter, and nothing remains to be done but the purely ministerial act of payment.

If in determining the Congressional intent, we are to be controlled by the language employed by Congress in making the appropriation in question, we think it clearly follows that upon the certification by the Public Printer that Professor Thorpe had furnished a manuscript answering the description of that mentioned in the act, and had complied with all other conditions affixed to the appropriation, it became the duty of the Secretary of the Treasury to make payment without further delay or question, and that upon his refusal to perform the purely ministerial duty thus imposed upon him, the writ of mandamus should have issued.

The real question in the case, therefore, is, are we permitted in the circumstances disclosed by the petition and answer, for both are before us, to go outside the act itself to determine its meaning? The act is couched in direct and unequivocal language. In it Congress appropriates \$10,000 for the purchase from Prof. Francis N. Thorpe of the manuscript for a new edition of the charters, constitutions, and organic laws of all the States, Territories, and colonies now or heretofore forming the United States, and any acts of Congress relating thereto, "*prepared by him*," on condition, however, that he "shall prepare a complete index of the work and do all proof reading in connection with the preparation, printing, and publication thereof." It is now contended that the act should be interpreted as though it read:

"For the purchase from Professor Francis N. Thorpe of the manuscript for a new edition of charters, constitutions, and organic laws of all the states, territories, and colonies now or heretofore forming the United States, and any acts of Congress relating thereto, prepared by him, ten thousand dollars," and which before its final submission to the Government shall receive the benefit of the collaboration with Professor Benjamin F. Shambaugh, professor of History in the University of Iowa. the basis for this contention being the statement of a member of Congress that "in his negotiations with Congress Professor Thorpe represented that the work offered for purchase would contain certain editing and revision by Professor Shambaugh."

In *United States v. Freight Association* (166 U. S., 290, 318), where the court was asked to refer to the debates in Congress to determine the proper determination to be placed upon the act in which the debates culminated, it was said: "All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein. There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States v. Union Pacific Railroad Company*, 91 U. S., 72, 79; *Aldridge v. Williams*, 3 How. 9, 24, Taney, chief justice; *Mitchell v. Great Works Milling & Manufacturing Company*, 2 Story, 648, 653; *Queen v. Hertford College*, 3 Q. B. D., 693, 707. The reason is that it is impossible to

determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did, and those who spoke might differ from each other, the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

An additional and very cogent reason exists in this case why a departure from the above rule of interpretation should not be made. It is clear that the act, from the terms of which we are asked to depart, evidences a contract between Professor Thorpe and the United States. The terms of the contract are therein fully set forth. Congress, evidently entertaining respect for the learning and ability of Professor Thorpe and reposing special confidence in him, appropriated \$10,000 for the purchase of a manuscript "prepared by him," and because of such respect and confidence required no review of his work prior to its acceptance under the appropriation. We are now asked to hold that Congress did not mean what it said; that the terms of the contract are different from and inconsistent with those stated in the act itself; and that what Congress intended to buy, and did buy, was a manuscript prepared by Professor Thorpe, assisted by Professor Shambaugh. This contention, in view of the language of the contract, is not, in our view, entitled to serious consideration. That a written contract, the terms of which are free from ambiguity and import a complete legal obligation, is conclusively presumed to record the intention of the parties thereto in the absence of fraud, accident, or mistake, is too elementary a proposition to require elaboration here.

There is no sufficient averment of fraud here. Subjected to analysis, the answer in effect admits that the manuscript delivered to and accepted by the Public Printer answers every requirement of the appropriation, which, as above noted, contains the stated terms of the contract. The averment that after having been offered one thing Congress deliberately and in stated terms contracted for another thing, for that we think is the effect of the averment upon which we are asked to predicate fraud, can not be permitted to justify the admission of parol evidence.

Had Professor Thorpe induced Congress to purchase a manuscript on the strength of a statement that it would be revised and edited by Professor Shambaugh, it is inconceivable that Congress should have specifically provided in the act embodying the terms of its contract with Professor Thorpe that the manuscript should be prepared by him. In other words, had Congress desired that Professor Shambaugh contribute in any way to the work, manifestly the act would have so stated.

If the manuscript, although answering every requirement of the stated contract, is not in fact what Congress anticipated it would be, the responsibility lies with Congress. Having specifically prescribed the conditions upon which the appropriation was made, and not having clothed any one with authority to review the manuscript delivered, it is conclusively to be presumed that the basis of this action by Congress was its confidence in Professor Thorpe and respect for his literary attainments.

It is true that the writ of mandamus does not lie where the duty sought to be enjoined is discretionary, or where the right to the performance of the act prayed for is not established or clear. Where, however, a Government official refuses to perform a ministerial act to the injury of a citizen, the writ will usually issue. In the present case the answer in substance admits the delivery to the Public Printer of a manuscript corresponding to the terms of the act making appropriation therefor, and compliance by appellee of the other conditions of said act. The answer further admits that the Public Printer duly certified the foregoing facts to the Secretary of the Treasury. We fail to see wherein that official has any discretion in the premises. When the Public Printer certified to him that Professor Thorpe "had furnished the manuscript for a new edition of charters, constitutions, and organic laws of all the States, Territories, and colonies now or heretofore forming the United States, and any acts of Congress relating thereto, prepared by him, that he had prepared a complete index of the work, and that he had read proof in connection with the preparation, printing, and publication thereof," we think it became the clear duty of the Secretary to make payment therefor, and that upon his refusal to do so he was subject to the remedy herein invoked. *U. S. ex rel. Daly*, 28 App. D. C., 552; 35 Wash. Law Rep., 81; *Garfield v. U. S. ex rel. Frost*, 30 App. D. C., 165; 35 Wash. Law Rep., 771; *Griffin v. U. S. ex rel. Le Cuyer*, 30 App. D. C., 291; 36 Wash. Law Rep., 103; *Drake v. U. S. ex rel. Bates*, 30 App. D. C., 312; 36 Wash. Law Rep., 140; *U. S. ex rel. Newcomb Motor Co.*, 30 App. D. C., 464; 36 Wash. Law Rep., 150.

The ruling that upon receipt of the foregoing certificate of the Public Printer the duty of the Secretary of the Treasury to make payment under the contract became fixed and certain, and, therefore, ministerial, is in effect a ruling that the demurrer to the answer should have been sustained. The second assignment of error consequently becomes unimportant and need not be considered.

The third assignment of error does not differ materially from the first, and, therefore, does not require separate consideration.

The cause will be remanded, with costs to appellee, and with directions that further proceeding be had not inconsistent with this opinion.

Remanded.

**Involuntary Proceedings—Transfer Within Four Months Period—Insanity as a Defense.**—The case of *In re Ward* (20 Am. B. R., 482), holds that the insanity of an alleged bankrupt at the time of the commission of the alleged act of bankruptcy—a conveyance of property to hinder and delay creditors—is a defense to an involuntary petition in bankruptcy. In such case under the defense that the alleged bankrupt did not commit the alleged act of bankruptcy, it was further held that the issue of insanity must be tried in the bankruptcy court and while an adjudication of his insanity by a state court after the filing of the petition in bankruptcy may be prime evidence of the fact, it does not conclude the bankruptcy court; and that the alleged bankrupt can not be required to submit himself to an examination before trial as to his sanity.

**Growth of Law Respecting Automobiles.****[Case and Comment.]**

The extraordinary development, in a few years, of travel on ordinary highways in motor vehicles of all kinds, some of them well-nigh as powerful as railroad locomotives, necessarily presents a variety of legal questions which affect the interests and rights of almost the entire public. Well-settled principles of the law of negligence are, of course, applicable in all kinds of cases, but their specific applications are often perplexing. It is not easy to forecast what judges and juries may think will or will not constitute negligence in accidents of a novel character. But in the past decade there has already accumulated a considerable body of decisions respecting the rights and liabilities of those who operate automobiles. That the use of such a machine on a public highway is not negligence, as matter of law, was explicitly laid down by the court in *Indiana Springs Co. v. Brown*, 165 Ind., 465, 74 N. E., 615, 1 L. R. A. (N. S.), 238; and this proposition had, of course, been taken for granted by all users of such machines. The liability for frightening horses is, of course, one of the most obvious risks in the use of such vehicles on highways. In *Christy v. Elliott*, 216 Ill., 31, 108 Am. St. Rep., 196, 74 N. E., 1035, 1 L. R. A. (N. S.), 215, involving the effect of a statute requiring an automobile to stop upon approaching a horse which appeared to be frightened, the court held that the statute applied if, "by the exercise of reasonable diligence on the part of the driver," it would have appeared that a horse was frightened, and that in such case no signal from persons in the carriage drawn by the horse was necessary to impose on the driver of the machine the duty to stop. The body of existing decisions on the law governing the use of such vehicles was reviewed in the annotation to these cases. But very recently several of the questions on this subject have been before the courts. The liability of the owner of an automobile for injuries caused by its use in the hands of a servant or a third person who had taken it from the garage without the owner's knowledge or consent, and not in the exercise of any employment by the owner, is denied in *Jones v. Hoge* (Wash.), 92 Pac., 433, 14 L. R. A. (N. S.), 216, as well as in *Lotz v. Hanlon*, 217 Pa., 339, 118 Am. St. Rep., 922, 66 Atl., 525, 10 L. R. A. (N. S.), 202, and there are other cases to the same effect. Any decision to the contrary would impose a liability on the owner of an automobile more extreme than is applied to the owners of horses or ordinary vehicles. It would certainly be a most extraordinary ruling that would hold the owner of a machine liable for damage done by it when it was tortiously taken, without his knowledge or consent, from his own premises or from some place where it was lawfully kept for him. In the case of *Jones v. Hoge*, stress was laid upon the fact that it was taken from a public garage by the owner's servant, and that he was not a competent and careful operator. But the court held that as the servant did not take it in the course of his employment, but solely for his own personal use, the master had no responsibility for it. To similar effect it was held in *Cunningham v. Castle*, — App. Div. —, where a chauffeur had taken the vehicle for his own use with permission from the owner. In *Mahoney v. Maxfield*, 102 Minn., 377, 113 N. W., 904, 14 L. R. A. (N. S.), 251, under a statute

making it the duty of the operator of an automobile on a public road to stop the machine upon signal from the driver of a horse, it was held that this statute did not absolutely require the stopping, in such a case, of the motor of the machine, in addition to stopping the vehicle itself, but that the question whether the failure to do this constituted negligence or not was to be determined by the circumstances of each case. It was also held, in *House v. Cramer*, 134 Iowa, 374, 112 N. W., 3, 10 L. R. A. (N. S.), 655, that the failure to arrest the spark of a machine upon making a brief stop in front of a corner store did not constitute negligence per se, but this was treated as a question of negligence on the facts of the case. The fact that a team was frightened by the explosions of the motor while the automobile was standing was held not to make the operator liable if, after he saw that the team was frightened, he could not stop the noise in time to prevent the damage. Some statutes require the motive power of such machines to be stopped if it seems necessary to avoid accident, but, under such a statute, it was held, in *Rochester v. Bull*, 78 S. C., 249, 58 S. E., 766, that the failure to stop the motor, the noise of which frightened a team of mules as they came suddenly around a sharp curve in a road, made a question for the jury. Other cases on the general question of liability with respect to horses on highways are found in the annotation to 14 L. R. A. (N. S.), 251. A more unusual case, presenting the rights, instead of the liabilities, of the user of an automobile on a highway, is that of *Doherty v. Ayer*, 83 N. E., 677, 14 L. R. A. (N. S.), 816, in which the Massachusetts court held that an automobile is not a carriage within the meaning of a statute requiring towns and cities to keep their highways reasonably safe and convenient for travelers with their horses, teams, and carriages, and that a town is not liable for failure to make special provisions for the safety of automobiles, if its ways are reasonably safe and convenient for travel generally. The court further held that an accident to an automobile beyond the limits of the highway, though it was on a surface of sand level with the road, and the marks of travel had been obliterated by an alteration of the road, did not make the town liable, since it was not required to keep the adjoining land in repair, and there was no such dangerous condition as to require the erection of a barrier to mark the limits of the road. A question was raised as to want of proof that the automobile was lawfully registered and licensed, but the court held this was not fatal in itself to a remedy for injury to the machine by a defect in the highway, since the presumption of law and fact was in favor of innocence, though if the machine was run in violation of the statute, the owner could not have a remedy. This case is certainly one of unusual importance to the owners of automobiles. Many highways may be safe for ordinary travel without being safe for automobiles. A note to the case, on the duty to have a highway safe for automobiles, shows that there is no other case which passes upon the specific question of the duty to have a highway or street free from inherent defects which would render the operation of automobiles thereon unsafe. A somewhat similar case, however, is referred to. This was *Corcoran v. New York*, 188 N. Y., 131, 80 N. E., 660, which involved an alleged defect in a public street ending at a steep declivity, which was protected



only by a guard rail and a picket fence, which was too unsubstantial to be of much protection in case of an automobile. The court said the city was not under any duty to make a more substantial barricade, as the fence and guard rail were doubtless sufficient for ordinary emergencies, but that the place should have been well enough lighted to give fair warning that it was merely a cul-de-sac, or so well guarded as to prevent entrance to the point of danger. The question raised by these cases will doubtless more frequently demand the attention of the courts hereafter. The liability for the breaking of a bridge under an extraordinary strain, such as that made by attempting to cross it with a steam traction engine, has arisen in various cases. The case of *Wabash v. Carver*, 129 Ind., 552, 29, N. E., 25, 13 L. R. A., 851, holds that it is not negligence per se, as matter of law, to attempt to cross a highway bridge with a traction steam engine, water tank, and threshing machine. A note to the case shows that other decisions generally regard it as a question for the jury to decide, whether or not such extraordinary vehicles are entitled to use a highway bridge. But questions of this sort are not likely to arise in respect to automobiles, since the heaviest of them will not often impose upon a bridge a greater burden than it is accustomed to bear.

#### Waiver of Privilege of Patients. [New York Law Journal].

Several recent utterances by the New York Court of Appeals disclose a liberal spirit in construing section 836 of the Code of Civil Procedure providing for the waiver of a patient's privilege to object to testimony of his physician as to information acquired in a professional capacity.

In *Clifford v. Denver & Rio Grande R. R.* (188 N. Y., 349), it was held that where a plaintiff in an action for personal injuries has caused the examination of her attending physician to be taken upon commission, the privilege has been generally waived and she may not elect that testimony so adduced shall not be introduced on the trial.

In *People v. Bloom* (N. Y. Law Journal, October 13, 1908) it was held that when, upon the trial of an action for personal injuries, the plaintiff's attending physicians were sworn in behalf of the defendant and permitted to testify, without objection, as to his physical condition before the accident, showing that his ailments were not the result of the accident, the plaintiff, when subsequently put on trial for perjury for having testified falsely in his civil action, is not entitled to invoke the rule excluding the evidence of the physicians.

In *Capron v. Douglass* (N. Y. Law Journal, October 14, 1908) it was held that on the trial of an action brought by patient against physician for malpractice, if the plaintiff, either by his own testimony or that of others given with his knowledge and consent, discloses his physical condition and the details of the operation complained of, he is no longer in a position to object to evidence on that subject by the defendant, but has waived the privilege afforded by the statute.

Perhaps the best statement of the reason for all these decisions is contained in the following language by Chief Judge Ruger in *McKinney v. Grand St., etc., R. R.* (194 N. Y., 352):

"The intent of the statute, in making such information privileged, is to inspire confidence be-

tween patient and physician, to enable the latter to prescribe for and advise the former most advantageously, and remove from the patient's mind any fear that she may be exposed to civil or criminal prosecution, or shame and disgrace, by reason of any disclosure thus made. . . . The patient can not use this privilege both as a sword and a shield, to waive when it inures to her advantage and wield when it does not. After its publication no further injury can be inflicted upon the rights and interests which the statute was intended to protect, and there is no further reason for its enforcement. The nature of the information is of such a character that when it is once divulged in legal proceedings it can not be again hidden or concealed. It is then open to the consideration of the entire public and the privilege of forbidding its repetition is not conferred by the statute. The consent having been once given and acted upon can not be recalled, and the patient can never be restored to the condition which the statute, from motives of public policy, has sought to protect."

These decisions disclose a different spirit from that manifested in *Holden v. Metropolitan Life Ins. Co.* (165 N. Y., 13). It was there held that an express waiver in an application for a policy of life insurance—the same being by its terms part of the contract—of the provisions of section 834 of the Code of Civil Procedure, is ineffectual to permit disclosures by a physician of information which he acquired in attending the insured in a professional capacity. As intimated on a former occasion, we have grave doubt whether the legislature ever intended the amendment in 1891 of section 836 to have the sweeping effect which the Court of Appeals gave to it in the case last cited. It would seem that what the legislature had in view was mere procedure and not substantive rights, the object being to guard against procuring waivers after a cause of action had arisen from the parties themselves through fraud or sharp practice. The Court of Appeals itself, indeed, assigns this as the apparent purpose of the amendment and, in view of the fact that waivers of this character in the original contract of insurance are generally upheld (*Keller v. Ins. Co.*, 95 Mo. App., 627; *Fuller v. Knights of Pythias*, 129 N. C., 318; *Andrews v. Mutual, &c., Assoc.*, 34 Fed., 870; *Metropolitan Life Ins. Co. v. Brubaker*, Kan., 96 Pac., 62), it would seem that a restricted scope might well have been given to the concluding sentences of section 836. The reasoning of the Appellate Division (11 App. Div., 426, 431) in the same case, holding the waiver in the contract valid, is, in our view, satisfactory and convincing.

#### Liberal Construction of Section 829 of the Code of Civil Procedure.

[New York Law Journal.]

The decision of the First Appellate Division of the Supreme Court, in *Wilber v. Gillespie* (112 N. Y. Supp., 20), is typical of the broad spirit in which section 829 of the Code of Civil Procedure is construed in order to effectuate its general purpose. It was held that a plaintiff was incompetent to testify that she had seen a decedent write his name in order to qualify her to express an opinion that a disputed document upon which she founded her claim was in his handwriting; that testimony of previous acts of writing in her presence consti-

tuted testimony of personal transactions, within the meaning of the section. Such ruling is not unlike that of the Court of Appeals in *Mills v. Davis* (113 N. Y., 243). The action was on a promissory note made by a decedent bearing indorsements of payment of interest made by plaintiff. It was held error to permit plaintiff and other interested witnesses to testify as to the length of time plaintiff had held possession of the note and that the indorsements were made during the lifetime of the decedent in order to avoid the statute of limitations. On this point the court said:

"But aside from these considerations, and in view of the statute (Code, sec. 829), which prohibits 'a party or person interested in the event' from testifying in his own behalf or interest against the executor of a deceased person concerning a personal transaction between himself and the testator, the plaintiff was improperly allowed to testify as to the length of time he had held possession of the note, or that the indorsements on the note were in his handwriting, and made during the lifetime of the testatrix. Each circumstance had a material bearing upon the issue, and each was important only because it was a transaction to which the decedent was a party. To the first as acquiescing in the continued possession of the note and thereby permitting an implication of its validity, and to the other, as payor of the money referred to in the indorsement. Unless that money was paid by her, or the indorsement made with her implied assent, it was of no significance."

#### Declarations Against Interest.

In *Smith v. Hanson*, in the Supreme Court of Utah (July, 1908, 96 Pac., 1087), it was held that in the absence of a statute, declarations by a decedent, to be admissible, must be against declarant's pecuniary or proprietary interest, and such interest must be clear and undoubted.

It was actually decided that declarations by a father, who had conveyed land to a daughter, that he had not started a suit to cancel the deed and that he had no knowledge of such suit, made about the time a suit to cancel the deed was brought, and shortly thereafter, were not, at the time when made, against the father's proprietary and pecuniary interest, for the declarations do not show that he did not claim any interest in the subject-matter of the action. The court said in part:

"If it should be said that declarations against interest, as distinguished from admissions, are admissible as such only when made by strangers since deceased, and not by persons since deceased in privity with the parties, then the evidence was properly excluded, for it is apparent that the declarant was in privity with the party offering the testimony. If these text writers had said that declarations against interest are admissible not only when made by persons since deceased and in privity with the parties, but also when made by persons since deceased who were strangers to the litigation and to the parties, such statement, we believe, would be more in harmony with the adjudicated cases. Probably that is all that is meant by the expressions of the authors referred to. We have been cited to no case where a declaration against interest was excluded because made by a person in privity with the parties. To the contrary, we find numerous cases where such a declaration

of a person since deceased was held properly admitted, though the declarant was in privity with the party litigant offering the declaration, and where it was received not as an admission of one identified in interest with a party litigant, but as direct evidence of the fact declared. The following are a few of such cases: *Coffin v. Bucknam*, 12 Me., 471; *Humes v. O'Bryan & Washington*, 74 Ala., 64; *County of Mahaska v. Ingalls*, 16 Iowa, 81; *German Ins. Co. v. Bartlett*, 188 Ill., 172, 58 N. E., 1075, 80 Am. St. Rep., 172; *Lehman v. Sherger*, 68 Wis., 145, 31 N. W., 733; *Taylor v. Witham*, 3 Ch. D., 605.

"It is therefore necessary to inquire further into the matter. The declarant was dead. It may well be said that the facts declared were presumably within the knowledge of the deceased. They were relevant to the matter of inquiry. They were made ante litem motam. The further question is: Was it sufficiently made to appear that the declarations were against the interest of the declarant at the time when made? The authorities generally hold that to be against interest the declaration must be against a pecuniary or proprietary interest of the declarant. While Mr. Wigmore, in his work on Evidence (vol. 2, sec. 1476), says that the doctrine should be extended to include a penal interest and all declarations of facts against interest of a deceased person, nevertheless he concedes that the cases have limited the admissibility of the declarations to a pecuniary or proprietary interest at the time when made. He asserts, however, that such a limitation was fixed arbitrarily. Whatever force there may be to the suggestions of Mr. Wigmore, it can not be doubted that the rule is firmly established in England and in this country that, in the absence of a statute, the declaration, to be admissible, must be against either a pecuniary or a proprietary interest. Quite true, in the case of *State v. Alcorn* (7 Idaho, 599, 64 Pac., 1014, 97 Am. St. Rep., 252) it was held that it was sufficient if the declaration tended to show 'a state of facts inconsistent with' the declarant's 'observations of the rules of chastity,' and that no 'beneficial purpose of the deceased could be served by the declaration.' In the case of *Moore v. Palmer* (14 Wash., 134, 44 Pac., 142) the declarations of a deceased person, which were not even dis-serving, but wholly self-serving, at the time when made, were admitted, in favor of his administrator, in an action brought against him to recover for professional services rendered the deceased, to show 'the improbability of the deceased's paying any such sum to the appellant for legal services, and as further tending to show that such services, if any in fact were rendered, were unimportant, and the estimate in which deceased held appellant as an attorney.'

"If we correctly understand the questions involved in these cases, we believe the rulings there made to be against the clear weight of authority. In a sense it may be said that the declarations of the deceased, when he declared that he had not started the suit, that he was not going to sue his daughter, and that he had no knowledge of such a suit having been started, were, at the time when made, against some sort of the declarant's interest. At least, it can not well be said that they were wholly self-serving at the time when they were declared. But we are of the opinion that they were not against a pecuniary or a proprietary interest."

**Hostile and Selfish Criticism of Courts.****[Case and Comment.]**

The courts seem likely to be a subject of controversy to an unusual extent in this year's political campaign. This is unfortunate. Political influences on the courts do not tend to secure impartial justice or to create that public confidence in the courts without which the administration of justice must be a failure. If the public welfare requires legislation to change legal procedure, that may appropriately constitute a political issue. Therefore the pronouncement of political platforms respecting a modification of procedure in case of injunctions, whether in respect to notice or to trial by jury, can not be condemned as improper, however regrettable the issue may be, because the question is one of public policy on which the people may fairly claim the right of decision. What is most improper, most inexcusable, and most pernicious, is the tendency of special interests to attack the courts whose decisions they disapprove. A recent newspaper editorial by Joseph O'Connor in the Rochester Post Express points out so clearly the selfish bias and hostile spirit of such critics which discredit all their opinions and statements on the subject that his language deserves to be read by every voter. It is this:

"Certain classes are great sticklers for reverence for the courts and the law so long as the law is interpreted to suit their interests and their prejudices; and whosoever criticises decisions in their favor is denounced as an enemy to law and the ministers of the law, or, to use the common phrase, a socialist or an anarchist; but the moment a court determines an issue in favor of some hostile class or interest, the champions become accusers. This is true of the typical capitalist as well as the typical labor leader; and the fact is that neither has the right feeling toward the law, or the judge, or the commonwealth. The spirit of each is anarchistic to this extent, that hatred or reverence for the law and the minister of the law is selfish, not a desire for the public good. It behooves us therefore to challenge every condemnation of the law or the judge, that is prompted by or tainted with personal or class interest or prejudice. It is a legal maxim that no judge shall try a cause in which he is interested; and no criticism of a judge holds good in a cause wherein the critic has anything at stake."

**Action to Recover Money Paid by Mistake.**—One who pays more than a fourth of the estimated value of land which she mistakenly believes her parents have bound themselves to convey in order to have the contract canceled is held, in *Tucker v. Denton*, 32 Ky. L. Rep., 521, 106 S. W., 280, 15 L. R. A. (N. S.), 289, to be entitled to recover it back, mistake being as to an existing fact, material, controlling, and mutual, or, if not mutual, the vendees being guilty of fraud in receiving the money when they knew the contract was unenforceable.

**Discharge in Bankruptcy—Borrowing Money on Credit.**—In the case of *in re Gilpin* (20 Am. B. R., 374), it has been held that the phrase "obtaining property on credit" in section 14b (3) of the Bankruptcy Act, as amended, includes a borrowing of money on time.

**Parol Testimony as to Motive; Replevin.**

In *Comeau v. Hurley*, in the Supreme Court of South Dakota (July, 1908, 117 N. W., 371), it was held that a contract or transaction attacked on the ground of fraud or deceit, though evidenced by a written instrument, may be affected by parol testimony of the parties as to the motive prompting their action, and the preceding or accompanying facts and circumstances may be fully stated and explained.

It was decided that in replevin involving cattle seized by defendants under execution as belonging to plaintiff's father, plaintiff could show conversations occurring many years previously between the father and his infant sons, including plaintiff, respecting their working a farm and buying cattle through him on their own account, though the conversations did not occur in defendants' presence, where defendants relied on an intent to defraud the father's creditors by transactions between him and his sons respecting the cattle.

**Bankruptcy Act—Section 1 (27)—Music Teacher Not a "Wage-earner."**—In the case of *First Nat. Bk. of Wilkes-Barre v. Barnum* (20 Am. B. R., 439), the United States District Court, Middle District of Pennsylvania, has held that a person giving music lessons at so much an hour is not a "wage earner" within the meaning of the Bankruptcy Act, 1898.

**Acts of Bankruptcy—Preference—Small Payment.**—A payment of a debt of \$3 to a creditor a week before the filing of an involuntary petition was held not to be preferential, in the case of *In re Stovall Grocery Co.* (20 Am. B. R., 537).

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

W. Blair and G. Blair, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Virginia L. W. Fox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of October, 1908. ELLEN C. DE Q. WOODBURY; WOODBURY BLAIR, Corcoran Bldg.; GIBB BLAIR; MONTGOMERY BLAIR. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,402. Administration. [Seal.] 43-31

**Legal Notices.**

**E. H. Thomas and Jas. Francis Smith, Attorneys**  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re Condemnation of Land in Square 626 for the  
Widening of G Street Northwest, in the District of  
Columbia. District Court, No. 775.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved May 23, 1906, entitled, "An act authorizing certain extensions to be made of the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway, and the Capital Traction Company in the District of Columbia, and for other purposes, have filed a petition in this court praying the condemnation of so much of square numbered 626, lying north of the north building line of square numbered 557 as they may deem necessary for the widening of G street northwest, in accordance with the provisions of the aforesaid act of Congress, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the said widening of G street and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid act of Congress and the Code of Law for the said District. It is, by the court, this 20th day of October, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 18th day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 18th day of November, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia and upon the tenants and occupants of the same before the said 18th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 43-1t

**R. P. Shealey, Solicitor**  
In the Supreme Court of the District of Columbia.  
Sarah F. J. Goode v. Joseph Parker Camp et al.  
No. 27,232, Equity Doc.—

The object of this suit is to perfect complainant's title by adverse possession to the east sixteen (16) feet front on F street by the full depth thereof, of lot thirteen (13), in John Harkness and others, commissioners, subdivision of square five hundred and ten (510) in the city of Washington, District of Columbia. On motion of the complainant, it is, this 19th day of October, 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of Samuel Blodgett and of Elias B. Caldwell, trustee, and the unknown successors and assigns of the Washington Association and United States Insurance Company, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a month for three months in The Washington Law Reporter and The Washington Times before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. oct. 23, nov. 13, dec. 11.

New corporations can procure from the Law Reporter Printing Company 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

**Notice of Petition for Change of Name by the Equitable Industrial Life Insurance Company.**

Notice is hereby given that the Equitable Industrial Life Insurance Company, duly incorporated under the laws in force in the District of Columbia, has filed its petition in the Supreme Court of the District of Columbia, being No. 23,102 in Equity, praying the court to change its name to the "Equitable Life Insurance Company," assigning as reasons therefor that as it has recently also engaged in the business of general life insurance, in conducting which its experience has been that the word "industrial" in its corporate name is misleading, detrimental and an obstacle to its getting business. **EQUITABLE INDUSTRIAL LIFE INSURANCE COMPANY**, by John S. Swormstedt, President; Allen C. Clark, Secretary. 43-3t

**Frank S. Bright, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas McGrain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1908. **JOHN J. MCGRAIN**, 182 V st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,556. Administration. [Seal.] 43-3t

**Sheehy & Sheehy, Attorneys**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Walsh, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1908. **BERNARD LEONARD**, 582 4½ st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,545. Administration. [Seal.] 43-3t

**George H. Calvert, Jr., Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Susanna M. Bond, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. **BENJAMIN F. SMITH**, by Geo. H. Calvert, Jr., Attorney, 452 D st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,481. Administration. [Seal.] 43-3t

**Wm. D. Hoover, Attorney**  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by C. E. Wyman, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,387. Administration. [Seal.] 43-3t

**Legal Notices.**

John B. Larner, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.  
 Estate of Julia E. McChesney, Deceased.  
 No. 15,527. Administration Docket 39.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 19th day of October, A. D., 1908, that William P. Dolan, (2) James W. Dolan, (3) Belle Fretwell, (4) Thomas M. Dolan, (5) Edwin Dolan, (6) Preston Dolan, (7) James A. Dolan, (8) Mabel Dolan, (9) W. K. Jones, (10) George S. Jones, (11) Mrs. M. J. Flynn, (12) Mrs. Nina Elson, (13) Helen Jones, and (14) Lula Jones, and all others concerned, appear in said court on Monday, the 23d day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-31

**SECOND INSERTION.**

Edward L. Gies, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Magdalena Elchner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. MICHAEL A. MESS, Room 818 Gen. Land Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,357. Administration. [Seal.] 42-31

P. M. Brown and C. W. Clagett, Solicitors  
 In the Supreme Court of the District of Columbia.  
 James H. Taylor, Executor and Trustee, et al. v. Lucy A. Cunningham et al. Eq. No. 27,954.

The object of this suit is to reform two deeds recorded in Liber No. 801, at folio 142, et seq., and in Liber 991, at folio 13, et seq., respectively, of the land records of the District of Columbia, so that the same may be made to pass an estate in fee simple to James H. Taylor, as executor and trustee under the will of Susan Poulton, deceased, to the property described in said deeds namely, all that land and real estate situate in the city of Washington and District of Columbia, being described as follows, part of lot A in George C. Hercules' subdivision in square three hundred and eighty-five (385) as per plat recorded in book W. F., page 140, surveyor's office, D. C., described as follows: Beginning for the same at the southeast corner of said lot, and running thence southwesterly along the north line of Maryland avenue, thirty-two and seventy-five hundredths (32.75) feet; thence northwesterly at right angles to said avenue sixty-nine and fifty hundredths (69.50) feet; thence north eight and forty-six hundredths (8.46) feet; thence northeasterly thirty and fifty hundredths (30.50) feet, to a point in the east line of said lot seventy-two and fifty-nine hundredths (72.59) feet northwesterly from the point of beginning, and thence southeasterly along said east line of said lot seventy-two and fifty-nine hundredths (72.59) feet to said avenue and the point of beginning. On motion of the complainant it is this 15th day of October, A. D. 1908, ordered, that the defendant, George W. Nichols, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 42-41

**Legal Notices.**

R. F. Downing and G. A. Berry, Attorneys  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.  
 Estate of James Cogan, Deceased.  
 No. 15,530. Administration Docket 39.

Application having been made herein for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Bartholomew Daly, it is ordered this 15th day of October, A. D. 1908, that Michael Cogan and the unknown next of kin and heirs at law of James Cogan, deceased, it appearing to the satisfaction of the court that there are unknown next of kin and heirs at law of said deceased, and all others concerned, appear in said court on Thursday, the 26th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-31

H. Ralph Burton, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.  
 Estate of Mary Cook Carter, Deceased.  
 No. 15,525. Administration Docket —.

Application having been made herein for letters of administration on said estate by Irene Carter, it is ordered this 14th day of October, A. D. 1908, that Frank Stevens Carter, and all others concerned, appear in said court on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-31

William A. McKenney, Attorney  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Henry Wells, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 2d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of October, 1908. LAURA R. WELLS AND AMERICAN SECURITY AND TRUST COMPANY, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,758. Administration. [Seal.] 42-31

Gordon & Gordon, Attorneys  
 Supreme Court of the District of Columbia,  
 Holding Probate Court.

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Mary E. Gennet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. ISADORE B. COOLEY, care of Gordon & Gordon, Century Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,400. Administration. [Seal.] 42-31

Justice blanks of every description for sale at this office.

**Legal Notices.**

**Coldren & Fenning, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph E. Savary, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of October, 1908. JOHN SAVARY, 2329a N. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,498. Administration. [Seal.] 42-3t

**Brandenburg & Brandenburg, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Annie Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. EDWIN C. BRANDENBURG, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,544. Administration. [Seal.] 42-3t

**Wilton J. Lambert, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Mary A. Moore et al. v. Roy J. Moore et al.**  
 No. 27,661. Equity Docket 61.

The object of this suit is to have partition made by sale and distribution of the proceeds among the parties entitled thereto of premises known as 616 M street northwest, and also part of original lots 8 and 9, in square 401, and two separate parts of original lot 5, in square 381, all formerly owned by John Moore, and any other part of said square 381, owned by the said John Moore at the time of his death; all of said property being situate in the District of Columbia. On motion of the complainants, it is, this 14th day of October, A. D. 1908, ordered that the defendants, Sarah V. Cary, Jessie Cary, and Charles Cary, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Washington Post before said [Seal] day. JOB BARNARD, Justice. A true copy. Attest: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 42-3t

**W. A. Johnston, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of William M. Starr, Deceased. Probate**  
 No. 15,102.

The notification as to the trial of the issues in the above entitled cause relating to the validity of the paper writing dated the 12th day of February, A. D. 1908, purporting to be the last will and testament of William M. Starr, deceased, having been returned non est as to Levi Morningstar, Hie Morningstar, Lavinia Botruff, Louisa Moore, Lizzie Porter, Olla Bowler, Nancy Coleman, William Christie, Charles Morningstar, Rena Morningstar, Fritz Morningstar, Frank Morningstar, Cora Cain, Hannah Long, Eliza Meek, Susan Robins, Elliott Christie, Hannah Morningstar, Logan Morningstar and Ogden Morningstar, heirs at law and next of kin of William M. Starr, deceased, "not to be found," it is this 12th day of October, A. D. 1908, ordered that the issues be set down for trial on the 25th day of November, 1908, and a copy of the said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for four weeks in The Evening Star, of Washington, D. C. The substance of said issues is whether said paper writing was procured by fraud or undue influence, and whether said testator was of unsound mind on the 12th day of February, 1908, or if he executed said will whether he afterwards revoked it. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-4t

**Legal Notices.**

**Henry H. Glassie, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Louise A. B. Hughes, Deceased.**  
 No. 14,168. Administration Docket 86.

The notification as to the trial of the issues in this case relating to the validity of the paper writings, dated the 24th day of March, 1899, and the 28th day of June, 1900, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Dr. Arthur De Roaldes, Gladys Connelly, Augustus S. Hutchins, Waldo Hutchins, Pattie Weeks, Harry B. Dick, Charly L. Bowman, William Weeks Hall, minor; Rev. Edward J. Byrnes, Mrs. Kittie White, Dr. Homer J. Dupuy, James M. Dupuy, Mrs. Anna De Roaldes, James R. Randall, Countess Anita Maggolini, Carlo Maggolini, Margherita Maggolini, Woodlawn Cemetery of N. Y. City, Sisters of Bon Secours, Dr. John A. Irwin, Fannie Hewes, Martha Hoge, Charles Hiern, Clara C. Mitchell, Mariou G. Wilson, Annie C. Grief, Sumter Calvert, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma L. Hewes Brown, Newton H. Hewes, Frederick S. Hewes, Jr., William H. W. Hewes, Francis G. Hewes, Henry L. Hewes, and Finlay B. Hewes, and the unknown heirs at law and next of kin of Louise A. B. Hughes, deceased, "not to be found," it is this 12th day of October, 1908, ordered that the issues be set down for trial on the 16th day of November, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writings were procured by fraud or undue influence, whether they were executed by said deceased, whether [Seal] they were revoked, whether said deceased was of sound mind, etc. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-4t

**George H. Lamar, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Mary A. Jones, Deceased.**  
 No. 15,390. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Virginia B. Jones, it is ordered this 14th day of October, A. D. 1908, that C. Lucian Jones, T. Skelton Jones, Roger ap Catesby Jones, Gertrude L. Melvin, Catesby ap Catesby Jones, Mary Page Thompson, Mattie Moran Jones, Mary Wisner, Llewellyn ap Roger Jones, Katharine Lee Jones, Julian Stuart Jones, Cleo Jones and Page Jones, infant, and all others concerned, appear in said court, on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, and The Washington Herald once in each of three successive weeks before the return day herein [Seal] mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-3t

**THIRD INSERTION.**

**Gordon & Gordon, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of James J. Barnes, Deceased.**  
 No. 15,608. Administration Docket —.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Sara Boulter Barnes, it is ordered, this 6th day of October, A. D. 1908, that Emma E. Barnes, Chancy R. Barnes, and Nellis Delamater, and all others concerned, appear in said court on Tuesday, the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 41-3t



## Legal Notices.

John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Lottie F. Holmead, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 7th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,495. Administration. [Seal.] 41-St

M. J. Colbert, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas J. Carley, sometimes called John T. Carley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 6th day of October, 1908. PATRICK J. DRURY, 310 10th st. N. W.; PATRICK F. CARLEY, 1168 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,524. Administration. [Seal.] 41-St

John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Calvin DeWitt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. THE WASHINGTON LOAN AND TRUST COMPANY, by Fred'k Eichelberger, Trust Officer. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,497. Admn. [Seal.] 41-St

McKenney & Flannery, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Joseph C. Hornblower, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. CAROLINE B. HORNBLOWER, 2030 Hillyer Place. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,518. Administration. [Seal.] 41-St

Perri W. Frisby, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Jesse Barnes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of October, 1908. LOTTIE BARNES, 814 4th st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,584. Administration. [Seal.] 41-St

## Legal Notices.

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, which was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Mary A. Cook, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 26th day of October, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 5th day of October, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,762. Administration. [Seal.] 41-St

H. R. Webb, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In the Matter of the Estate of Ellen C. Hebb, Deceased. No. 15,515.

Application having been made herein for the probate of the last will and testament of the said deceased, and for letters testamentary on said estate, by Bertha Y. Hebb, it is ordered this 6th day of October, A. D. 1908, that Elizabeth L. Hebb, Hopewell Hebb, Archibald Hebb, Sally B. Hebb, Vernon Hebb, Richard Hebb, Lawson Hebb, and Clinton Hebb, and all others concerned, appear in said court on the 10th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication [Seal] to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 41-St

S. Duncan Bradley, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Daniel O'Connor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the 2d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of October, 1908. TIMOTHY O'CONNOR, 5319 Quest. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,516. Administration. [Seal.] 41-St

H. J. Gibbons and T. L. Jeffords, Attorneys  
In the Supreme Court of the District of Columbia.  
In re Dissolution of the Kerner & Getts Jobbing-Publishing Company. Equity No. 23,067.

ORDER.  
It appearing that petition has been filed in this court for a voluntary dissolution of the body corporate, the Kerner & Getts Jobbing-Publishing Company, and it further appearing that such application is accompanied by the accounts, inventories, and affidavit by law required, it is, on motion of Tracy L. Jeffords, attorney for petitioner, this 5th day of October, 1908, ordered that all persons interested in the said corporation, Kerner & Getts Jobbing-Publishing Company, appear in the Supreme Court of the District of Columbia and show cause, if any they have, by the 20th day of November, 1908, why the said corporation should not be dissolved. And further, that notice of this order be published in The Washington Herald, a newspaper of general circulation in the District of Columbia, and also in The Washington Law Reporter, weekly for three successive weeks, the first publication to be not less than one month before the said 20th day of November, [Seal] 1908, the day fixed for showing cause as aforesaid. HARRY M. CLA BAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wm. J. Lemon, Asst. Clerk. 41-St

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - OCTOBER 30, 1908

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### Building Loan; Lender Not Responsible for Manner in which Borrower Uses Money.

In *Pennsylvania Steel Company v. Title Guaranty and Trust Company et al.*, decided October 9, 1908, by the Court of Appeals of New York (40 N. Y. L. J., 343), it was held that one who advances money to another on a building loan contract, taking as security therefor a mortgage on the land where the building is to be erected, is not responsible to lienors furnishing materials for the building as to the manner in which the borrower uses the money. A portion of it may be applied by the borrower to satisfy an existing mortgage on the land without prejudice to the legal rights of such lienors, and especially is this the case when the building contract, as filed, provides that the premises on which the mortgage was to be given to secure the building loan should be "subject to no incumbrance, except such as may be waived by the lender." It was held, therefore, that an oral agreement between the parties to such a contract to the effect that an existing mortgage should be satisfied out of the loan, and thereby make the building loan a first lien on the property, was not such a material modification or variation of the written contract, which made no specific mention of that fact, as would, under the Lien Law of New York, subordinate the building

loan mortgage to the liens filed by materialmen. It was declared that the court might take judicial notice of the fact that it is usual, when loans are made on real estate, to provide, so far as practicable, for the payment out of the new loan of existing liens on the property and the expenses attendant on the making of the loan. The court distinguishes the case of *Anglo-American Association v. Campbell*, decided by the Court of Appeals of this District (13 App. D. C., 581: 27 Wash. Law Rep., 2).

### Res Ipsa Loquitur.

In *Moglia v. Nassau Electric Railway Co.*, recently decided by the appellate division of the Supreme Court of New York (111 N. Y. Supp., 70), it appeared that plaintiff was injured by an electric shock received from one of the poles of defendant's trolley system. The plaintiff made proof of the happening of the accident, and no evidence being offered by the defendant, the trial court instructed the jury that the fact of the accident called for an explanation from the defendant, and as none was offered their verdict should be for the plaintiff. It was contended for the defendant that the jury was not bound to believe the plaintiff, but should be free to determine whether he was injured in the manner shown, and that even if the doctrine of *res ipsa loquitur* was applicable the inference of negligence was for the jury. The appellate court, however, affirmed the judgment, holding that no error was committed by the trial court in failing to submit the issue of defendant's negligence to the jury.

### Negligence in Caring for Unconscious Patient.

In the case of *Haase v. Morton & Morton* (115 N. W., 923), it appeared that the plaintiff, while under the influence of an anesthetic, was taken from the operating room of a hospital to the elevator for the purpose of being removed to the room assigned her. The elevator was somewhere below and the shaft door was open. The attendants left the plaintiff to see about getting the elevator. During their absence the cot or stretcher on which plaintiff was lying, by some means (probably by an involuntary movement on her part) was started, causing it to run into the open shaft and inflicting the injuries complained of. It was contended by the defendant that the movement of the cot or stretcher was something not reasonably to have been foreseen, and that the act of leaving it in the exposed position could not be considered the proximate cause of the injury. The Supreme Court of Iowa declined to sustain this contention, and affirmed a judgment in favor of the plaintiff.

## Supreme Court of the District of Columbia.

RICHARD D. GWYDIR ET AL.

v.

CHARLES H. TREAT ET AL.

## EQUITABLE LIENS; RECEIVERS.

M. and G. having a contract with certain Indians for the prosecution of a claim, their compensation to be a certain per cent of the amount recovered, employed complainants to assist in the work, and agreed to pay them six forty-fifths of whatever fee was received. The contract was limited to ten years, and the claim was not recovered during that period; and thereafter other attorneys were employed in the case. Subsequently, the claim being paid, Congress referred the matter to the Court of Claims to state what compensation should be paid the attorneys. That court awarded to M. \$6,000 and to G. \$14,000, but declined to make any award to complainants for the reason that their contract was not with the Indians. Held, construing the contract between M. and G. and complainants, that complainants were entitled to an equitable lien on the sums awarded to M. and G. for the six forty-fifths thereof which they were to receive under their contract, which lien the court would protect by injunction and the appointment of a receiver.

No. 28,005, Equity. Decided October 29, 1908.

HEARING on a bill in equity for an injunction and receiver. Decree for complainants.

Mr. CHARLES POE and Mr. F. D. BLACKSTONE for complainants.

Mr. A. A. LIPSCOMB, Mr. L. A. PRADT, and Mr. D. W. BAKER for the defendants.

Mr. Justice BARNARD delivered the opinion of the Court:

In this case the complainants have filed a bill, praying for an injunction and a receiver, in order that they may obtain payment on a contract made by them with the defendant, Hugh H. Gordon, and one Levi Maish, now deceased, his administrator, Benjamin Miller, being made a party defendant herein. The defendant, Charles H. Treat, Treasurer of the United States, is made a party defendant, because the payment, which it is claimed is about to be made to the defendants Gordon and Miller, is to be made by a check or warrant by said treasurer.

The contract set out in the bill is dated June 15, 1894, and by its terms the said Levi Maish and Hugh H. Gordon agreed to pay to the complainants \$10,000 each, provided they should recover the total amount of a certain claim in behalf of the Colville Indians in the State of Washington, aggregating \$1,500,000, and should receive for their services a fee of 15 per cent upon the entire claim.

The contract then has this provision:

"It is, however, distinctly understood and agreed that in case we do not collect the full amount of said claim of one million five hundred thousand dollars, or in case the commission paid us as attorneys for said Indians is reduced below fifteen per cent, then the amount to be paid to the said Gwydir, Edwards, and Hall shall be reduced in the same proportion. In other words, we agree to pay said Gwydir, Edwards, and Hall jointly a fee amounting in the aggregate to six forty-fifths of the fee or commission actually paid to us, this six forty-fifths part of the fee to be divided equally between the said Gwydir, Edwards, and Hall."

The said contract in the introductory part recites that the said complainants had, before said date, at the instance and request of the said Maish and Gordon, rendered services to them in attending to the signing and execution of a contract between said Maish and Gordon and the Indians resident on the Colville reservation, and the said contract with the complainants was made in consideration of said services.

The said contract of Maish and Gordon with the said Indians, by which they became the sole attorneys of said Indians in the prosecution of said claim, was limited to a period of ten years; and said contract was approved by the Commissioner of Indian Affairs and the Secretary of the Interior, as required by the rule in such cases, but on condition, however, that the said attorneys should accept as full compensation for services to be rendered thereunder the sum of 10 per cent of the amount or amounts to be recovered, instead of the 15 per cent as therein provided.

The said Maish and Gordon failed to realize on their claim during the lifetime of their said contract, although they did render valuable services in the matter during that time. But before, as well as after, the expiration of said contract other counsel came into the case, and Congress having appropriated the amount due to said Indians, a question arose as to the compensation that the said Maish and Gordon and other attorneys engaged in the prosecution of the claim should be entitled to receive; and so, June 21, 1906 (34 Stat. L., 377), in the same act making the appropriation, jurisdiction was conferred upon the Court of Claims to hear, determine, and render final judgment for the amount of compensation to be paid to the attorneys who had performed services as counsel on behalf of said Indians in the prosecution of the claim of said Indians for payment for said land; and in determining the amount of compensation for such services the court was authorized to consider all contracts or agreements theretofore entered into by said Indians with attorneys who had represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim.

The suit in which this was to be determined was to be brought in the name of Butler and Vale, who came into the case in 1903, or subsequent thereto. Messrs. Butler and Vale filed a petition in the Court of Claims, being No. 29,526, and that court heard the various claims for attorney's fees, and gave judgment for the sum of \$60,000 in the aggregate, \$6,000 of which was awarded to Benjamin Miller, administrator of the estate of Levi Maish, deceased, and \$14,000, to the defendant, Hugh H. Gordon.

In that suit the complainants herein presented their claim, which was denied by the Court of Claims, that court holding that they had no claim against the said Colville Indians.

In the finding of facts, the Court of Claims found that the said contract now brought into this cause, was executed by and between the complainants herein, and the said Maish and Gordon; but they say that it does not appear that said contract was ever presented to or approved by the Secretary of the Interior. They also found that the complainants herein rendered certain services to said Maish and Gordon, in procuring signatures of the Indians to the contract of May 12, 1894;

but they say it does not appear that the said complainants rendered service to the Indians.

Under the act conferring the jurisdiction on the Court of Claims, and under this finding of fact, there was nothing for that court to do but to dismiss the petition of the complainants herein, because the act gave them no jurisdiction to determine any question of indebtedness between the complainants and the said Maish and Gordon, for services rendered by the complainants to said Maish and Gordon; but only authorized them to determine the compensation that should be paid to attorneys who had performed services as counsel on behalf of the Indians, and it related only to contracts entered into by said Indians with attorneys, and also to services rendered by attorneys for the Indians.

The defendants, Hugh H. Gordon and Benjamin Miller, as administrator of Levi Maish, deceased, have filed a joint and separate answer to the complainants' bill, in which they admit the execution of the two contracts above mentioned, and they admit the death of Levi Maish, and that defendant Miller is his representative. They admit the award of \$14,000 to Gordon and \$6,000 to Maish; but they deny that the complainants have any lien on said fund, or any right to be paid anything by the defendants, by reason of their said contract.

The claim in said answer that their contract with the Indians expired on July 25, 1904, and that the right of complainants to compensation depended wholly on that contract; and that their claim for compensation, on which the Court of Claims had awarded them the said several sums, was not based on the said ten-year contract, which had expired, but was based on a quantum meruit under the terms of the jurisdictional act aforesaid; and they claim that they are in no ways bound to recognize the complainants under that legislation and award; and they further claim, in their answer, that the dismissal of the petition filed by complainants in the Court of Claims, by that court, was an adjudication that they were entitled to nothing, and that the same was res judicata, and for that reason the complainants have no standing in this court.

The case was set down for hearing on bill and answer, and the question is, shall this court assist the complainants by a receiver and injunction, or otherwise, to compel the said Gordon and Miller to recognize the contract of the complainants, and to pay them six forty-fifths of the amount of fee to be received by them for their services in behalf of said Indians?

It does not appear that Maish and Gordon, or either of them, performed any services in behalf of the said Indians, after the expiration of their contract, July 25, 1904. It must then be presumed from this record that the services for which the allowance of \$20,000 has been made, were performed in accordance with and during the life of the said contract. If this is so, then, notwithstanding the expiration of the time in which Messrs. Maish and Gordon were to be the sole attorneys for the said Indians, the court must have recognized the contract as the foundation of their claim, because it was to consider "all contracts or agreements heretofore entered into by said Indians with attorneys;" so that whether the contract had expired or not, was of no consequence in determining the value of the services

performed under the contract, and awarding compensation to the attorneys.

There is no limit, however, in the contract made by the complainants with the said Maish and Gordon. The time of payment fixed by that contract would seem to depend on the time of recovery of their own compensation from the Indians, the language of the contract being in that respect as follows:

"We do hereby agree, in consideration of said services, to pay to said parties, out of the fee to be paid us for the collection of said claim, when the same may or shall be recovered," etc.

The fact that the contract between the complainants and the said Maish and Gordon was not approved by the Secretary of the Interior, or the Commissioner of Indian Affairs, does not seem to be material, because it was not a contract in which the United States or the Indians had any interest. Being a contract between private individuals, the only question which seems material to determine is the question as to whether there was an equitable assignment of a portion of the fund which the said Maish and Gordon were to receive, or whether complainants have an equitable lien on said fund, and to determine if that assignment or lien can be enforced in this jurisdiction under the facts of this case.

The amount of complainants' claim was clearly fixed at six forty-fifths of the fee which the said Maish and Gordon were to receive for their services in behalf of the said Indians; and said Maish and Gordon agreed, in consideration of the services contributed by the complainants, to pay to said parties, out of their fees, the said six forty-fifths part when their fees were recovered.

My attention has not been called to any case changing the principles announced by the Court of Appeals in the case of *Sanborn v. Maxwell*, 18 App. D. C., 245; 29 Wash. Law Rep., 607, which was a case substantially like the present. The court said in that case: "The agreement alleged in the bill, substantially to the effect that complainants' fees for services should be satisfied out of the proceeds of defendant's claim in controversy, and constitute an interest therein to that extent, created a charge enforceable as an equitable assignment or lien."

This holding was supported by the authorities cited, to wit: *Dexter v. Gordon*, 11 App. D. C., 60; 25 Wash. Law Rep., 421; *Hutchinson v. Worthington*, 7 App. D. C., 548; 24 Wash. Law Rep., 97; *Fourth Street Bank v. Yardly*, 165 U. S., 634, and *Walker v. Brown*, 165 U. S., 654.

The contract of the complainants with the said Maish and Gordon, could not have been the foundation in the Court of Claims of any award which could have been paid from the money belonging to the said Colville Indians. That court had no jurisdiction over them, as to said claim, notwithstanding their voluntary appearance, and petition for payment out of the fund due to the said Indians. The court could not take jurisdiction of the subject-matter of a suit over which it had no power, by the consent of the applicants for relief. Its determination, therefore, does not become res judicata as between the complainants and the said Maish and Gordon, because there was no authority in that court to determine their rights as between themselves.

My conclusion is that the complainants have an equitable lien on the fund in question by reason

of the facts admitted in this cause, which the court ought to enforce by injunction and receiver, and I will sign an order in accordance with this opinion.

#### Extra Compensation to Expert Witnesses.

[New York Law Journal.]

In *Burnett v. Freeman*, in the Kansas City Court of Appeals of Missouri, reported in XXXVII National Corporation Reporter, page 249, it was held that a physician is not entitled to recover on a quantum meruit compensation in addition to the legal fees for expert testimony given on behalf of a litigant. As to this general proposition the court follows the weight of authority and, as it seems to us, the better reasoning. In accordance also with the weight of authority the court distinguishes between attendance at court and giving such evidence as an expert is able to give from his general knowledge and experience, and the performance of any outside work in preparation for taking the stand, holding that the witness may lawfully demand extra compensation for such special work. On this point the court says:

"It should be remembered that the duty the expert owes to the State, as a performance of citizenship rather than a rendering of service to an individual, pertains to an obligation to give the court the benefit of the knowledge he has in store at the time he is called upon. He can not be required to especially fit himself for lines of inquiry. He should not be expected to make examinations, perform professional service and the like, for that is not the office of a witness. He could not be compelled to do that any more than an ordinary person, with no knowledge of the facts pertaining to a case, should be required to go and post himself so as to become a witness; and so the court said, in *Ex parte Dement* (25 Ala., 397, 25 Am. Rep., 611), 'that nothing we have said is intended to support the proposition that a physician or surgeon could be punished as for contempt for refusing, unless paid therefor, to make a post mortem examination, or undertake any other operation requiring skill and special professional training in order to qualify himself, when desired by a court so to do, to testify in a cause.' In *Flinn v. Prairie County* (60 Ark., 204), it was held that the expert could not be required to attend upon a trial and listen to testimony so as to qualify himself. 'An expert can not be compelled to examine a case in order to give a professional opinion, nor to make a post mortem examination or analyze the contents of a stomach, nor to attend at a trial to hear and consider the testimony given, so as to qualify himself to give a deliberate opinion on a question of science arising upon such testimony.' *Lawson on Expert & Opinion Ev.*, 317. 'If the witness be required to do any particular thing, as to analyze the contents of a stomach, or perform a post mortem operation—in these and similar cases such services can not be compelled by the ordinary process of subpoena or the labor required by the payment of an ordinary witness fee.' *Commissioners v. Lee*, — Colo. App., 177; 32 Pac. Rep., 84."

The positions so taken are in accord with the views of Professor Wigmore in his treatise on "Evidence" (vol. 3, sec. 2203), and we think the practical considerations advanced by that learned

author are conclusive. Usually if an expert is to be called on any serious issue, it will be necessary for him to prepare himself for the particular case. Probably, therefore, frequent abuses of the right of calling an expert without extra compensation will not occur, and, on the other hand, an indigent party will not be debarred from compelling a person under process of subpoena to give opinion evidence on ordinary lines which may be important for justice, while entailing comparatively little hardship on the witness himself.

In *People v. Montgomery*, in the New York Supreme Court (13 Abb. Pr., N. S., 207), occurs this language:

"The district attorney, it is true, might have required the attendance of Dr. Hammond on subpoena; but that would not have sufficed to qualify him to testify as an expert, with clearness and certainty, upon the question involved. He would have met the requirement of a subpoena if he had appeared in court when he was required to testify and given proper impromptu answers to such questions as might then have been put to him in behalf of the People. He could not have been required, under process of subpoena, to examine the case and to have used his skill and knowledge to enable him to give an opinion upon any points of the case, nor to have attended during the whole trial and attentively considered and carefully heard all the testimony given on both sides, in order to qualify him to give a deliberate opinion upon such testimony as an expert in respect to the question of the sanity of the prisoner."

The true purport of this often cited case has sometimes been misunderstood; it seems to be in accord with the general current of authority conceding the right to compel an expert to appear on subpoena and give "impromptu answers," but holding that he can not be compelled specially to qualify himself without special compensation.

The recent Missouri case, however, goes further, making a ruling of very questionable soundness and expediency. It was held that a special agreement to pay a medical expert for attendance and testifying in court is contrary to public policy and void. The reasoning is that, as he is bound to give his testimony founded on his general knowledge on the same terms as an ordinary witness, it is improper to permit him to charge for what good citizenship requires him to do gratis. We are unable to perceive the force of this theoretical argument. If the policy of allowing extra compensation to expert witnesses be once recognized, it would seem that considerations of public morals are no more involved if the witness gives his opinion merely from general knowledge and experience than if after special preparation. On the practical side all manner of hair-splitting questions would arise as to whether the witness was giving evidence attributable only to his general professional training or of some form of particular qualification.

*Dodge v. Stiles* (26 Conn., 463), cited by the Missouri court in support of its view, was a case of an ordinary, not an expert, witness, and even as to the former the court intimates that circumstances might exist which would render a contract for extra compensation valid. In *Barrus v. Phaneuf* (166 Mass., 123) it was held generally and after full discussion that an express contract to recover extra compensation as an expert might be enforced, the opinion not containing any intimation that the same was contrary to public policy.

### A Few Suggestions as to Brief-Making.

There are certain essential features of a good brief which are well known to most lawyers, but which in the writing of a brief are sometimes ignored or overlooked through haste or forgetfulness. It is the purpose of this article to call attention to some of these features—to perform, as it were, the office performed by a memento mori or by a Laputan flapper. No attempt will be made to lay down a complete set of rules for brief making, or to discuss every step in the preparation of a brief. The suggestions will begin at the point where the lawyer has formulated a preliminary statement, arranged the points in an orderly and proper manner, and commenced his search for authorities. It may, however, be remarked, in passing, that the statement of facts should always be fair, and that any unfairness will work to the prejudice of the party resorting thereto. See *People v. White*, 176 N. Y., 331, 347. The folios of the record should always be referred to in support of each statement, and the points should not contain—at least in the Court of Appeals—extended quotations from evidence. See *Stevens v. O'Neill*, 169 N. Y., 375; *People v. White*, supra.

The brief-writer should, of course, be familiar with the classifications of the law adopted by modern digests and law-writers. Unless he is, he will be at a great disadvantage in the attempt to thread his way through the vast maze of case law now in existence. Assuming that he is familiar with these classifications he will be able, in searching for authorities on any given point, to know with reasonable assurance under which of the various heads of the classifications he is most likely to find a treatment of the point. If the point is one susceptible of treatment under several heads, it will be found convenient to make a memorandum of each of them.

The writer should then consult the best text-books on the subject, the various encyclopedias of law, the various compilations of annotated reports, and the digests of the decisions of his own State. If this search does not produce satisfactory results, digests of a general nature may be consulted, and if necessary digests of the decisions of other particular jurisdictions. If the question involves a definition, or the meaning of a word or phrase, the brief-maker will naturally extend his search to the law dictionaries. Indeed, even though the point does not turn directly upon the meaning of a word or phrase, the law dictionaries, and compilations of judicial definitions, will often put the searcher on the track of helpful authority.

In consulting the digest or encyclopedia, the brief-maker should use, not only the index, if there is one, but also the table of contents or analysis of the work or the title to be examined. In consulting any work of reference, all cross-references which even remotely promise to throw additional light on the subject should be carefully run down. Frequently the table of cases in a text-book will assist in the location of the treatment of a question concerning which there is little authority. Of course, if the writer of the brief is blessed with a memory for cases by their names, and knows that the question has been passed upon in a certain case, he will look in the table of cases for that case and ascertain in what portion of the work the case is cited and discussed.

As the writer consults the various works referred to, it is generally convenient to make a list

of the cases cited therein. This list, when completed, should enable him to consult all of the case-law on his subject. He should then turn to the reports and examine the opinions or such of them as may be necessary to serve his purpose. And in examining the cases it is desired to use, it is the part of wisdom to ascertain whether they have been affirmed, reversed or modified on appeal, or approved, criticised, distinguished or overruled by subsequent cases.

Text-books and encyclopedias of law should rarely be used for any other purpose than that of getting general ideas of what the law on a given point is and of ascertaining where to find reported cases on the subject. The cases themselves should always be referred to for this purpose, the encyclopedias being particularly valuable, as they usually cite more cases to a given point than are cited to the same point in a text-book. In the opinion of the writer encyclopedias and text-books should rarely be cited in a brief as authority for a proposition of law, unless primary authority—and by primary authority is meant a reported case—is wanting. It should always be borne in mind that a legal treatise does not make law; that it represents nothing more than its author's conception or construction of what the law is or should be; and that the statements it contains are authority only to the extent that they are made so by the fact that they correctly represent the decisions in adjudicated cases.

It is true that the courts have often adopted principles which have been first advocated by writers of legal treatises. Some text-book writers have blazed the way in new regions of the law, and have written books which have had a very marked influence on the later development of the law. Perhaps the most notable instance of such a text-book is *Dillon on Municipal Corporations*. It is probably safe to say that the statements made in Judge Dillon's great work have been approved and adopted by the courts more widely and with less question than have the statements made in any other law book of recent years. But an opinion advanced by a writer does not become law until it is made so by judicial decision or by statute. The proper method, then, of using a text-book or encyclopedia is to read everything it has to say concerning the question under investigation, take a memorandum of the cases cited, examine the reports of those cases, and extract the law directly from the opinions of the courts. As a matter of course, some text-books are more valuable and are entitled to more respect than others. Thus in the very recent case of *Elterman v. Hyman* (192 N. Y., 113, 121), the Court of Appeals, in approving a rule laid down in *Sugden on Vendors and Purchasers*, said, per Vann, J., that Sir Edward Sugden "wrote . . . with almost the force of judicial authority." A little further on, in the same opinion, Judge Vann, in quoting from *Pomeroy's Equity Jurisprudence*, referred to the author as "Mr. Pomeroy, who ranks as an author with Judge Story;" evidently considering that the mere making of the comparison was equivalent to a statement that Mr. Pomeroy's writings rank high as authority. Nevertheless, the preferable method is to go to the cases themselves, instead of relying upon the views of even the most eminent law-writers.

The function of a digest is merely to point out the cases passing upon given points, and it should



never be used for any other purpose than to locate the cases. A headnote is merely a convenient device employed by the reporter to inform the reader what the case decides. It is not a part of the opinion, and should be resorted to only to ascertain whether a given point is passed upon in the case. There are several reasons why a digest paragraph or a headnote should not be relied upon as a statement of a legal proposition. In the first place, it is usually too condensed to give the reader a complete understanding of the real decision. It may state accurately what the court has decided without disclosing the reasons which induced the decision. In the second place, it may not state the court's decision with accuracy. In the third place, it may represent the court as having laid down a proposition when in fact the court's utterance on the question was a mere dictum. As an illustration of the fact that headnotes are sometimes misleading or inaccurate, see *Noval v. Haug* (48 Misc. (N. Y.), 198, 199), wherein Burr, J., called attention to the inaccuracy of a headnote in *Ugla v. Brokaw* (77 N. Y. App. Div., 310), and showed that it did not correctly state the holding of the court.

In citing cases, the decisions should be stated with complete fairness and the utmost accuracy. Under no circumstances should a case ever be cited as supporting a proposition which it does not support, or cited in such a way as to misrepresent the actual decision or mislead the court. The brief-writer can not be too careful about this. From the standpoint of mere expediency it is unwise to cite cases inaccurately or improperly, because the offender will soon lose the confidence of the courts. But the duty to cite cases accurately rests on a higher ground than that of mere expediency. Accuracy of citation is a point of honor. This idea has been excellently expressed by the Honorable John F. Dillon, than whom no man is better fitted to speak with authority on questions of professional ethics, or better qualified to say the last word in regard to the proper mode of writing briefs. In his admirable paper entitled "Practical Hints in the Preparation of Briefs," 1 *Columbia Jurist*, 124; 14 *American Law Record*, 53, Judge Dillon said: "A citation of a case under a given proposition ought, unless distinctly otherwise stated, to be equivalent to an implied professional certificate that, in the writer's judgment, the case cited is an express authority in support of such proposition."

Naturally New York courts will give no weight to cases from other jurisdictions on a question which the Court of Appeals has decided differently, either directly or in principle. See *Foster v. Retail Clerks' International Protective Assoc.*, 39 Misc. (N. Y.), 48, 59. Nor will the Supreme Court of New York follow a decision rendered by a court of another jurisdiction, where there are pertinent decisions to the contrary rendered by the Supreme Court within the State. See *Matter of Interborough Metropolitan Co.*, 56 Misc. (N. Y.), 128. But where there is an absence of New York authority on a proposition, due consideration will be given to authorities cited from other jurisdictions. See the *Jennie Clarkson Home v. Missouri, etc., R. Co.*, 182 N. Y., 47, 64. It may be well to suggest that cases of other jurisdictions which probably carry the most weight in a brief for the New York courts are those of the United States Supreme Court, by the English courts, and by the State courts

which enjoy a particular high reputation, such as those of Massachusetts, New Jersey, Alabama and Iowa. Of course, however, on Federal questions, State courts will follow the decisions of the United States tribunals.

Where it is difficult or impossible to find cases directly in point, the writer must resort to analogous cases and show that the principles laid down in the latter are applicable to his case. In such a situation analogous cases are deemed authoritative and are received and treated as such by the courts. Thus in the recent case of *Egleston v. Scheibel* (113 N. Y. App. Div., 798, 800), Mr. Justice Gaynor, in deciding a point as to which there was a scarcity of authority, said: "If it be difficult to find precise decisions for the foregoing, it is only because it has seldom, if ever, been questioned; but there are decisions bearing on the general principle" (citing several cases).

Ordinarily mere dicta of judges are of small value as authority, and therefore should not be cited. Dicta may be used, however, where pertinent decisions are wanting. In such case, though not controlling, they have a highly persuasive value as authority. In *People v. McKane* (31 Abb. N. Cas., 177), Bartlett, P., in referring to certain cases which he had cited to sustain his view of the law on a certain point, said: "It is argued that the cases which I have cited are not binding as authorities, inasmuch as what was said in the opinions . . . was not necessary to any one of the decisions actually rendered, and that the observations, on this subject are, therefore, to be deemed obiter dicta. . . . Still the uniform expression of the higher courts of the State on the question under consideration are not to be disregarded by the courts of first instance. Such utterances furnish the latter with the most trustworthy guides to a correct decision, in the absence of direct precedents."

In briefing a negligence case, it is well to remember that the general principles of the law of negligence are comparatively few in number and are usually well settled. For this reason, other adjudicated cases claimed to be merely similar in principle with those involved in the case being briefed are ordinarily of very little value as precedents unless the facts in those cases are similar to the facts in the case at bar. As was said by Mr. Justice Jenks, in *Corr v. City of New York* (App. Div., 2nd Dept.), 121 App. Div., 578, 579: "The courts constantly reiterate that each case of negligence turns upon its peculiar facts, and that the decisions in other cases are not direct precedents." In a negligence case, therefore, the brief-writer should endeavor to apply settled principles to the facts of his case, and should argue from principle rather than precedent, unless he has a case "on all fours" in its facts.

One of the most vexed questions connected with the preparation of a brief is, "how long should it be?" It is perfectly well understood, of course, that a brief should be concise—its very name signifies so much. But that knowledge is of very little assistance to a lawyer in determining the proper length of a brief in any given case. The difficulty lies in ascertaining of what conciseness consists. Does it require that the brief shall be condensed into the smallest space within which it is possible to recite the facts and state the law? If not, how far is it permissible to go in the direction of elaboration of treatment? To the first of

these questions the answer is an emphatic no. A brief ought to be something more than a bald narrative coupled with a mere statement of abstract legal principles.

The second question is more difficult to answer, but there are certain elementary rules which should aid in its solution. In the first place, verbosity is the unpardonable sin in brief-writing. It obscures the argument, weakens the brief, and wearies the reader. This does not mean that the writer should invariably express an idea in the fewest words in which it is capable of being expressed. It frequently happens that the shortest possible mode of expression is less informing, less exact, or less elegant than a longer mode. But the moment the writer has said everything that it is necessary for him to say to assist the court in reaching its decision, and has said it in a way that is incapable of being misunderstood, he should stop. He should not use unnecessary words merely because they have a pleasing sound to him; or indulge in useless repetition; or endeavor to impress the court with his learning or his industry. In a word, he should not lay himself liable to the charge that "he draweth out the thread of his verbosity finer than the staple of his argument."

On the other hand, neither accuracy of statement nor clearness of statement nor essential fullness of statement should ever be sacrificed to conciseness. The writer should use just as many words as are necessary to express accurately, clearly and fully just exactly what it is necessary for him to say. His effort should be, not to express himself in such a way that he can not be understood. He should choose his words with a nice regard to their precise meaning and their ability to express clearly and accurately just exactly what he wants to say. He should adopt a dignified, simple and energetic style, and sedulously avoid so-called "fine writing."

In the matter of citing cases supporting the principles of law relied upon, care should be taken to avoid overloading the brief with too many cumulative citations, especially where the principles are so well settled or are uncontroverted. Enough cases should be cited, however, to overbalance the cases which have been or may be cited by opposing counsel, and convince the court, if such be the fact, that the propositions which the brief seeks to sustain are supported by the weight of authority. Where the proposition is one concerning which there is a scarcity of authority, of course use should be made of every available decision. Furthermore, judicious use should be made of quotations from opinions, where they shed real light upon the proposition to which the cases are cited. But a brief should not be loaded down with extended quotations. In *Stevens v. O'Neill* (169 N. Y., 375), the Court of Appeals referred to this matter as follows: "Extended quotations from authorities have no place in the points, which, after stating the facts fairly, should set forth the positions insisted upon by counsel, the heads of the argument, and the authorities relied upon to support it. When every lawyer wrote his points with a pen there was no occasion for complaint in this regard, but since the use of stenographers has become general the evil has grown until it is so serious that repression is necessary." (p. 377).

While a brief should not be encumbered with useless repetition, repetition is sometimes per-

missible and even desirable. The purpose of a brief is to convince; and it is frequently difficult for the writer to determine which one of several acceptable modes of expressing a given proposition is most likely to carry conviction to others. In such a case it is the writer's duty to employ several modes—to hammer away until he feels that he has achieved the desired purpose.

Every lawyer knows that the courts have repeatedly (and very properly) criticised the practice of writing long briefs, and have urged brief-writers to aim at conciseness. This criticism, however, has been leveled at prolixity, and not at legitimate and necessary length. The courts certainly have no desire to induce lawyers to so abridge their briefs that there will be no discussion or an inadequate discussion of material questions. Furthermore, there is such a wide difference between the viewpoint of the judge and that of the lawyer that it is hardly possible for them to agree as to the proper length of a brief. This difference is well illustrated by an anecdote told of the late Judge Archibald Wright of the Tennessee Supreme Court, the distinguished father of our distinguished Secretary of War, Gen. Luke E. Wright. Judge Wright was noted on the bench for his short, pithy opinions, though at the bar he had had the reputation for particularly voluminous briefs. When he was asked by a friend who had been a fellow practitioner how it happened that he wrote such short opinions, when he had previously written such long briefs, he replied: "As a judge I simply state what I am convinced is the law, but as a lawyer I had to labor with a d—n fool court."

The sum and substance of the matter is that it is impossible to apply the yard-stick rule of measurement to a brief. It should be long enough to present adequately the case which it covers, just as Abraham Lincoln said that legs should be long enough to reach from the body to the ground.

There is much difference of opinion among lawyers of ability as to whether a brief should discuss all of the points of law involved in a case or should discuss only the most important of the points. This question has recently been touched upon by the Honorable Alfred C. Coxe, Judge of the United States Circuit Court, Second Circuit, in an entertaining and convincing article entitled, "Is Brief-Making a Lost Art?" 17 Yale Law Journal, 413. Judge Coxe takes the position that the brief-maker should concentrate his efforts upon the presentation of the fundamental questions—"the strategic points." On the other hand, an anecdote told of the Honorable U. M. Rose, of Little Rock, Arkansas, sometime President of the American Bar Association, indicates that at least that distinguished lawyer believes that every related point should be urged which appears sustained by judicial authority, although the practitioner may himself doubt the soundness of the doctrine. It is said of Judge Rose that while arguing a point of law before an appellate court of high jurisdiction, one of the judges asked abruptly:

"Judge Rose, do you think that this is the law?" "To be candid with the court," was the immediate reply, "I do not; but who knows what this court will decide the law to be? I have won and lost cases contrary to what I believed was the better law."

Perhaps there is no real difference of opinion between these two eminent lawyers. It is quite likely they would both subscribe to the view that

the proper course is for the lawyer to make a fight on every point which affords a fighting chance, but to concentrate most of his energy upon what Judge Coxe happily terms "the strategic points." Emphasis on the leading points does not require that the minor points shall be ignored or given insufficient treatment, but merely that due regard shall be paid to the relative importance of the various points discussed—that a due sense of proportion shall be observed.

In this connection it should be observed that, where there a number of exceptions, they should not be "grouped together . . . under a single allegation of error," but those which are claimed to constitute ground for reversal should be specifically called to the attention of the court. See *Nelson v. Village of Canisteo*, 100 N. Y., 89, 93.

A brief-maker is sometimes under the unpleasant necessity of discussing testimony concerning matters of an offensive or revolting nature. In choosing his phraseology in such a case, he must be guided by common sense. Decency dictates that he shall express himself with as much delicacy as is possible, but his duty to his client demands that he shall omit nothing that is essential to an adequate presentation of the case. He should not let prudishness or false modesty betray him into obscurity of expression. His proper course is to discuss with clean frankness everything that ought to be brought to the attention of the court, using such words as may be necessary to make his meaning perfectly clear. But he should not go one step beyond this. While it is proper to call a spade a spade when necessary, it is inexcusable, it has been observed, to call it "a damned old shovel."

A brief should be kept scrupulously free from offensive personalities and from abuse of the courts or of opposing counsel. It is not only in bad taste to descend to the use of such objectionable matter, but the brief is likely to be stricken from the files of the court, or its author disciplined. In *Schleissner v. Schleissner*, 72 N. Y. App. Div. 492, the Appellate Division, First Department struck from its files a brief referring to the trial court as the "arrogant Trial Justice," and refused to hear the appeal until the appellant had filed a brief omitting the objectionable matter. In that case the court said, per Willard Bartlett, J.: "The epithet applied to the judge . . . is grossly improper and impertinent. There is nothing in the record to excuse or palliate such a characterization, and the insertion of abusive matter of this sort in the brief renders it scandalous and makes it the duty of this court to refuse to permit the paper containing it to remain upon the files of the appellate division."

Finally, no good brief can be produced without the exercise of care, patience, and intelligence. It should be borne in mind that the writing of a brief is a man's work and requires earnest and energetic effort. Von Moltke, when asked what three things were essential to the successful conduct of a war, replied: "Money! Money! Money!!!" In like manner it may be said that the three things essential to successful brief-making are "Industry! Industry! Industry!!!" The lawyer who endeavors to produce a brief without hard work is like the cat of the adage, which "would eat fish, and would not wet her feet."—John C. Myers, in the September Bench and Bar.

#### Liability of Charitable Institution for Torts of Servant.

In *Kellogg v. Church Charity Foundation of Long Island*, decided by the appellate division of the Supreme Court of New York, and reported in the *New York Law Journal*, it is held that charitable institutions are liable in damages for torts of their servants to persons who are not patients in them. Mr. Justice Gaynor, in delivering the unanimous opinion of the court, said:

This is an action against a charitable hospital corporation for damages for injuries to the plaintiff by being run into in the street by an ambulance of the defendant by the negligence of the driver. There was a dismissal on the ground that charitable corporations are not liable for the negligence of their agents or servants—i. e., that the rule respondeat superior does not apply to such corporations.

The question presented has been discussed in a large number of cases in this country. American and English Annotated Cases, vol. 4, page 104. The opinions and decisions are not only conflicting, but those which reach the same result do not agree upon any rule of exemption from liability, and many of them rest on stated reasons or grounds which may well be challenged as fallacious. This court is free from the constraint of authority, for the question has not been settled in this State, if, indeed, in any State. There seem to be no such cases in England. For a correct understanding it is necessary to classify the cases. When that is done the limits of the question will be perceived, and it will also appear that its discussion in most of the cases was irrelevant. Although all of the cases have been examined it will suffice to cite the principal and typical ones.

1. There are a considerable number of them, such as *Corbett v. St. Vincent's Industrial School* (177 N. Y., 16), and *Benton v. Boston City Hospital* (140 Mass., 13), which serve as examples of the whole class, in which nonliability rests on the ground that the charitable institution was acting as an agency of sovereignty, and as such shared with it its immunity from being sued, as the familiar rule is. These decisions are promiscuously cited as applicable or as make-weights in cases where such agency did not exist, but obviously have to be left out of consideration in so far as the point actually decided in them is concerned; and the expressions in the opinions outside of that are not binding.

2. In the great bulk of the cases the negligence sued for was that of physicians or surgeons, or of nurses and similar employees to patients in such charitable institutions. *Van Tassel v. Eye & Ear Hospital*, 15 N. Y. Supp., 620; *Haas v. Missionary Soc'y*, 26 N. Y. Supp., 868, 6 Misc. R., 281; *Ward v. St. Vincent's Hospital*, 39 App. Div., 624, 65 App. Div., 64, 78 App. Div., 317; *Collins v. N. Y. Post Graduate School*, 59 App. Div., 63; *Joel v. Women's Hospital*, 89 Hun, 73; *Wilson v. Homeopathic Hospital*, 97 App. Div., 37; *McDonald v. Mass. Gen. Hospital*, 120 Mass., 432; *Hearns v. Waterbury Hospital*, 66 Conn., 98; *Conner v. Sisters of the Poor*, 10 Ohio Dec., 86; *Glavin v. Rhode Island Hospital*, 12 R. I., 411; *Downes v. Harper Hospital*, 101 Mich., 555; *Powers v. Mass. Homeopathic Hospital*, 109 Fed. R., 294; *Hewett*

v. Ass'n, 73 N. H., 556; Bruce v. Central Meth. Ep. Ch., 147 Mich., 230. It may well seem strange that lack of liability in such cases should be so invariably put on the ground that the defendant for being a charitable institution was not subject to the rule respondeat superior which applies to the relation of master and servant in respect of torts to third persons by the servant; for such relation of master and servant does not exist as to third persons in the employment of physicians and surgeons, architects and the like (unless, to be sure, by contract). They are not servants, but in an independent employment (Laubheim v. S. S. Co., 107 N. Y., 228; Allan v. S. S. Co., 132 N. Y., 91; Burke v. Ireland, 166 N. Y., 305; O'Brien v. S. S. Co., 154 Mass., 272; Quinn v. R. R., 94 Tenn., 713; South Flo. R. R. v. Price, 32 Fla., 46; Eighth v. Union Pac. R. R., 93 Iowa, 538; Union Pac. R. R. v. Artist, 60 Fed. R., 365), and with them must be classed on the same principle, it would seem, their assistants, nurses and the like, in the things in which they necessarily act under their control and direction, instead of that of the employer. "The relation of master and servant only exists between persons of whom the one has the order and control of the work done by the other. A master is one who not only prescribes to the workman the end of his work, but directs or at any moment may direct the means also, or, as it has been put, retains the power of controlling the work; and he who does work on those terms is in law a servant, for whose acts, neglects, and defaults, to the extent to be specified, the master is liable." Pollock on Torts, 4th ed., p. 72. The case of Hannon v. Siegel Cooper Co. (167 N. Y., 244), is not to the contrary. There the defendant went into the practice of dentistry as a business and thereby had a contract relation with each patient which made it answerable for any negligence or malpractice of its employers in treating him. The liability grew out of contract.

3. We are now come, by process of elimination, to a precise test of whether, and, if so, in what cases charitable institutions are exempt from the general rule respondeat superior in respect of the torts of their servants.

(a) In many of the cases much is made of the fact that such institutions derive no profit or benefit on the question of whether such rule applies, or, indeed, whether they can be held liable for any torts. But that exemption from liability does not arise from that fact is manifest from the undoubted liability of other similar institutions which derive no profit or benefit. The Rector, &c., v. Buckhart, 3 Hill, 193; Blaechinska v. Howard Mission, 56 Hun, 322; Mulchey v. Meth. Rel. Socy., 125 Mass., 487; Davis v. Central Cong. Socy., 129 Mass., 367; Newcomb v. Boston Protective Dept., 151 Mass., 215; Chapin v. Holyoke Y. M. C. A., 165 Mass., 280.

(b) In many if not most of the cases a ground for the nonliability for the torts of agents or servants of charitable institutions is that to pay damages for such torts would be a diversion of their funds from the trust purposes for which they are donated by the charitable, and thus a contravention of the trust, and that as such institutions have no other funds it would be futile to allow judgments to be taken against them in such cases. But the opinions of the judges in these same cases almost invariably except cases where the agent or servant was incompetent and there was negligence

in his selection, failing to take note that it would be as much a diversion of the trust funds to pay damages for the tort of negligence in selection as for any other tort. If the rule exist it must necessarily apply to all torts and in all cases. The only support for the argument that it does exist is found in the remarks of judges in certain rather old English cases, which were repudiated in later cases and never had a direct application to actions of tort against charitable corporations such as are now common. It is true that an action does not lie against a trustee under a will, or the like, as such, for his torts or those of his servants in the affairs or administration of the trust. He has to be sued individually; but the reason is purely technical, and the courts allow the judgment against him individually for damages to be paid out of the trust funds if he was free from wilful misconduct in the tort. No rule, therefore, that trust funds may not be used to pay damages for torts in the administration of the trust exists even in the case of ordinary express trusts, let alone in the general trusts of charitable corporations. Powers v. Mass. Homeopathic Hospital, 109 Fed. R., 294; Bruce v. Central Meth. Ep. Church, 147 Mich., 230; Hewett v. Association, 73 N. H., 556. The position of such a corporation in respect of its torts would seem to be the same as that of an individual carrying on similar charitable work with donated funds or with his own funds. I do not understand that if my servant, sent out by me on an errand of mercy or charity, negligently runs over one in the street, I am not liable for his act.

4. In what cases, then, is such a person or corporation freed from the rule respondeat superior? That rule exists only where the strict relation of master and servant exists out of which such rule grows, as we have already seen; it does not grow out of every case of one employing another. We must therefore come down to employees in respect of whom such relation of master and servant can exist, for it is useless to talk of the said rule in respect of employees who are not such servants, who are above their grade of service, as is the case of physicians and surgeons, and the like. This brings the question down to the ordinary run of servants, who are subject to the direction of the master at any moment in the manner and way of doing the work assigned to them, in general and in detail. If a charitable institution is to be freed from the rule respondeat superior a ground therefor must be found in law. If, then, in order to find a ground, we again resort to classification of the cases that have come into the courts, or that may arise, and separate torts of such servants against beneficiaries or patients of the charitable trust or institution, from torts against outsiders, a ground for such exemption may be perceived in respect of the former, but not of the latter. The law may imply an intention on the part of the donors of the charitable funds that such funds shall be used for the charitable purpose only, and then imply an acquiescence in this intention by all persons who accept the benefits of the charity, and in that way spell out a waiver by such persons of any responsibility of the institution for the negligence or torts of its servants. If the courts want to exempt such institutions this may be a tenable, though some may think a rather ingenious or far-fetched, ground on which to do it. But no such acquiescence or waiver can be attributed to an outsider;

to a person run over in the highway by the ambulance of such an institution by the negligence of its driver, for instance, as is the case before us. *Powers v. Mass. Homeopathic Hospital*, 109 Fed. R., 294; *Bruce v. Cent. Meth. Ep. Ch.*, 147 Mich., 230; *Hewett v. Ass'n*, 73 N. H., 556. The cases of such torts to outsiders are few. Those of *Noble v. Hahnemann Hospital* (112 App. Div., 663) and *Blaechinska v. Howard Mission* (56 Hun, 322) seem to be the only ones in this State. The former was the same as the present case, but the ambulance was at the time in the service of the city, and the decision was put on that ground. What was said outside of this was obiter, was taken from opinions in cases of torts to patients, and is open to the same observations which have been applied in the foregoing to such opinions. And in the latter case liability seems to have been taken as a matter of course.

5. It is probably manifest enough at this stage that there are tort cases against such institutions which do not come within the foregoing classifications and discussion at all. I refer to cases where the duty owed is one specifically cast upon the defendant by law, and therefore incapable of being evaded or escaped by being delegated to any servant. For instance, a section of coping, or a blind hanging by one hinge, or a ceiling of the hospital might fall and injure an employee, a patient or an outsider, or a broken coal hole cover in the yard or sidewalk might do a like injury (*Blaechinska v. Howard Mission*, 56 Hun, 322), or a scaffold put up by the institution for the use of workmen might be defective and fall (*Bruce v. Cent. Meth. Ep. Ch.*, 147 Mich., 230), or there might be neglect to supply a physician or surgeon to a patient brought in (*Glavin v. Rhode Island Hospital*, 12 R. I., 411). The decision in the recent case of *Abston v. Waldon Academy* (118 Tenn., 124), where the negligence was the omission to supply fire escapes as required by law, by which an inmate of a charitable educational institution was injured, does not seem to be well bottomed. It is put on the ground of diversion of trust funds, which has been discussed and found wanting in the foregoing; and the negligence being that of the institution itself, i. e., in respect of a duty cast upon it by law, the decision can not, it would seem, be put on the ground of nonliability for acts or omissions of servants in the routine of their employment. Liability in such cases does not rest on the rule respondeat superior, but on the narrower one that the duty is one for the defendant to perform itself, and into which the question of the negligence of servants does not enter. Of course, if such institutions were to be held not liable for their torts or neglects in respect of duties which can not be delegated to servants, they would be held not liable for any torts of servants also for the same reason of exemption, whatever it might be, but there is not any disposition to exonerate them from the former liability. For instance, the cases generally admit that they would be liable for negligence in the nondelegable duty of selecting competent servants or employees, of whatever grade or kind, as we have seen.

The judgment should be reversed.

Equity—Wills.—That equity has no jurisdiction of a bill brought solely for the construction of a will which disposes merely of legal estates, is held in *Hart v. Darter*, 107 Va., 310, 58 S. E., 590, 15 L. R. A. (N. S.), 599.

#### Personal Injury from Fall of Car Window; Contributory Negligence.

In *Cleveland C. & St. L. Ry. Co. v. Hadley* (84 N. E., 13), it was held that a passenger's protrusion of her arm out of the window of a railroad car, after having observed its fall from its own weight, is held insufficient to charge her with contributory negligence as a matter of law. The court says:

"It was shown by the evidence that when appellee entered the coach in St. Louis the window was up, and while crossing the bridge over the Mississippi River it fell. Appellant's counsel insisted that this circumstance constituted a warning to appellee, and that the subsequent protrusion of her arm from this window was contributory negligence. Instructions to this effect were tendered and refused."

If appellee's arm had been injured by the first falling of the window sash, the case of *Faulkner v. Boston, etc., R. Co.* (187 Mass., 254, 72 N. E. 976), urged upon our attention with apparent confidence, would have been in point and an influential authority. In that case the court very properly said:

"In an action for injuries to a passenger caused by the fall of a car window when the train started of its usual motion, it appearing that the window and attachments were in good order, and that the fall must have been due to it not having been properly fastened, and there being no evidence that defendant's employees raised the window, plaintiff could not recover."

The case of *Breen v. N. Y., C. & H. R. R. Co.* (109 N. Y., 297, 16 N. E., 60, 4 Am. St. Rep., 450), is to the same effect, in which *Danforth, J.*, said: "The fall of the window can not be attributed to defective construction any more than to the failure of the last passenger who raised it to put it all the way up, so as to have it engage the catch, or to see that it did engage the catch firmly."

The case of *Goss v. Northern Pac. Ry. Co.* (48 Or., 439, 97 Pac., 149), was ruled by the same principle, and the court said furthermore that "the evidence given on the trial was so clear and convincing that the accident was not due to the negligence charged in the complaint as to completely overcome any presumption which may have arisen from the mere happening of the accident."

An approved general statement of the application of the doctrine *res ipsa loquitur* is found in the case of *Price v. St. Louis, etc., R. Co.* (75 Ark., 479, 88 S. W., 575, 112 Am. St. Rep., 79), cited in appellant's brief, and is as follows: "The rule would seem to be that when the injury and circumstance attending it are so unusual and of such a nature that it could not well have happened without the company being negligent, or when it is caused by something connected with the equipment or operation of the road over which the company has complete control, a presumption of negligence on the part of the company usually arises from proof of such facts, in the absence of anything to the contrary, and the burden is then cast upon the company to show that its negligence did not cause the injury."

"It is manifest, even from appellant's contentions, that the unexplained falling of the window while crossing the bridge was not sufficient to charge appellee with knowledge that the catch was defective, and subject her to an imputation

of contributory negligence in thereafter using the window. Her injury was not the result of the protruding arm coming in contact with an outside object near to the track, as was the case in *Indianapolis, etc., R. Co. v. Rutherford*, 29 Ind., 82, 92 Am. Dec., 336.

"Appellee had a right to hoist the window for any proper purpose, and to assume that the catch with which it was equipped was suitable and sufficient to hold it when latched. The evidence above set out affirmatively shows that she raised the window until the latch caught, and, assuming the truth of this statement, the fall could only have occurred because the latch was defective and insufficient in some respect.

"This is an appliance of the car over which the appellant was required to exercise continuing oversight and care. The court, therefore, correctly instructed the jury that, if the accident and resultant injury were occasioned by reason of a defect in this appliance, a prima facie case of negligence was established, and it was incumbent upon appellant to produce evidence which would excuse such apparent failure of duty."

**"Safe Place to Work."**

[New York Law Journal.]

In *Hahn v. Conried Metropolitan Opera Company*, in the First Appellate Division of the New York Supreme Court (June, 1908, 126 App. Div., 815), it was held that where a chorus singer at an opera house was injured through the giving way and fall of a temporary bridge used as part of the scenery during the performance of an opera the rule *res ipsa loquitur* did not apply, and the evidence was insufficient to support a verdict for plaintiff. It was expressly laid down that such temporary bridge was not a "place" within the rule requiring the master to furnish employees with a safe place to work.

In the opinion of Mr. Justice Scott, in which one other member of the court concurs, a third member concurring in the result, occurs the following language:

"It appeared without contradiction that the timber used in the construction was comparatively new, and at least new that season, and that it exhibited no visible defects. It also appeared that the bridge was designed to be of sufficient strength to hold 50 or 60 people, and that not more than 14 were on it when it broke down. A similar bridge had been frequently used in this and other operas without accident. When the bridge was set up by the stage hands the several parts were bolted together. The mere happening of the accident certainly justifies the inference that there was some defect either in the design or construction of the bridge or in the manner in which it was put together on the night on which the accident happened; but this is not enough to establish actionable negligence on the part of the defendant. The bridge was not a 'place' within the rule which requires the master to furnish his employees with a safe place to work, but was rather an appliance, such as a scaffolding used in the conduct of the work has frequently been held to be. *Butler v. Townsend*, 126 N. Y., 105, 26 N. E., 1017; *Benzing v. Steinway*, 101 N. Y., 547, 5 N. E., 449; *Stringham v. Hilton*, 111 N. Y., 188, 18 N. E., 870, 1 L. R. A., 483; *Kimmer v. Weber*, 151 N. Y., 417, 45 N. E., 860, 56 Am. St. Rep.,

630. The duty of the master with reference to such an appliance was fully performed when he had furnished competent and experienced persons to design and construct it and a sufficient quantity of proper material with which to build it, and there is nothing in the case to justify an inference that the defendant had failed in either of these particulars. On the contrary, all the evidence upon the subject is to the contrary. If the collapse occurred from some careless omission on the part of the stage hands in bolting the structure together, as may have been the case, this was negligence of co-employees of the plaintiff, for which the defendant is not be held liable, for this was a mere detail of the work properly entrusted to plaintiff's fellow-servants, for whose negligent performance the master is not responsible. *Kimmer v. Weber, supra.*"

The *Central Law Journal* for October 16, 1908, has reported this decision with the following note:

NOTE.—What is a "Safe" Place to Work Which the Master is Required to Furnish.—The importance of the distinction between the place to work and the appliances to work with, which is so prominent in the law of master and servant, lies in the fact that a servant does not assume the risk of accidents and injuries due to the failure of the master to exercise reasonable care in furnishing him with a reasonably safe place to work, but does, on the other hand, assume the risk of such injuries as result from defective or dangerous machinery or appliances. 26 Cyc., pp. 1185, 1186. Of course both of these correlative rules of law have their important exceptions which, however, we will not undertake to discuss in this annotation.

It is a rule of law, well settled by authority, that it is the duty of a master to provide his employees with a suitable place in which to work with a reasonable degree of safety, and without exposure to dangers not within the obvious scope of the business as usually carried on. *Smith v. Peninsular Car Works*, 60 Mich., 501; *Frye v. Gas. Co.*, 94 Me., 17; 45 Atl., 402; *McDonnell v. Railroad Co.*, 105 Iowa, 459; *Saunders v. Brick Co.*, 63 N. J. L., 554, 76 Am. St. Rep., 222.

The following are instances which have been held to constitute "unsafe places to work" which rendered the master liable for injuries: *DePauw Co. v. Stubblefield*, 132 Ind., 182, 31 N. E., 535 (an opening in the floor fourteen inches wide and three feet long covered by loose boards and pieces of iron which became displaced, causing injury); *Missouri Malleable Iron Co. v. Dillon*, 206 Ill., 145, 69 N. E. Rep., 12 (a hole or depression in the floor of a foundry which caused a truck of red hot castings to be overturned upon plaintiff); *Angel v. Mining Co.*, 115 Ky., 728, 74 S. W. Rep., 714 (placing a case of dynamite near a furnace fire to thaw where plaintiff is required to look after the furnace and not the dynamite); *Nugent v. Cudahy Packing Co.*, 126 Iowa, 517, 102 N. W. Rep., 442 (a new concrete pier not sufficiently hardened, upon which plaintiff was assigned to work and which crumbled under a weight it was expected to bear); *Ferris v. Hershheim*, 51 La. Ann., 178, 24 So. Rep., 771 (staircases, the zinc covering on the threads of which was torn and jagged, causing plaintiff to stumble); *Fyre v. Electric Co.*, 94 Me., 17, 46 Atl. Rep., 804 (hole dug in front of boiler and left improperly covered, resulting in injury to fireman); *Hearn v. Quillen*, 94 Md., 39, 50 Atl.



Rep., 402 (fall of roof in process of construction); *Johnson v. Bank*, 79 Wis., 414, 48 N. W. Rep., 712, 24 Am St Rep., 722 (fall of snow from roof of shed into which plaintiff was required to carry brick).

The following case will illustrate what is considered not to be an unsafe place to work: *Babcock Bros. Lumber Co. v. Johnson* (120 Ga., 1030, 28 S. E. Rep., 438). The "place" in this case was an unfastened upright brace among the rafters intended as a means to support the roof, which a servant sent to work on the ceiling suddenly caught to keep from falling. The lateral movement pulled the heavy brace out of place and fell with plaintiff to the floor. Brace was intended to support a perpendicular weight, and therefore need not be fastened to resist a lateral force.

The "place" to work must be distinguished from the avenues of egress and ingress. Thus, where a master sets his servant to work in a part of an unfinished building which is itself safe, but can be reached only by climbing a ladder through a dangerous hatchway, there is no violation of the master's duty to furnish a safe place to work so as to render him liable for injury received by the servant while climbing the ladder, as the ladder is not the servant's place to work, but only the means of reaching such place. *Evans v. Mfg. Co.*, 25 N. Y. Supp., 509.

#### Notes of Recent Decisions.

**Damages.**—The right to recover damages for mental suffering for nondelivery of a telegram in time to enable the sendee to attend the funeral of one to whom he was about to be married, to whom he was not in the slightest degree related, is denied in *Randall v. Western U. Teleg. Co.*, 32 Ky. L. Rep., 859, 107 S. W., 235, 15 L. R. A. (N. S.), 277.

When an administrator has a right of action under the statute imposing a liability for the wrongful death of a person, it is held, in *Jacksonville Electric Co. v. Bowden* (Fla.), 45 So., 755, 15 L. R. A. (N. S.), 451, that he may recover the value, at the decedent's death, of the prospective earnings and savings that, from the evidence, could reasonably have been expected but for the death of the decedent.

**Street Railways.**—Failure to look and listen before crossing a street-car track at a public street crossing is held, in *Pilmer v. Boise Traction Co.* (Idaho), 94 Pac., 432, 15 L. R. A. (N. S.), 254, not to be, as matter of law, negligence per se.

One whose work in a street does not bring him within striking distance of passing cars, who, nevertheless, at a place where the track is straight and the view unobstructed for over 200 feet, without thinking of the cars, goes near enough to be hit while his back is turned, is held, in *Kelly v. Boston Elev. R. Co.* (Mass.), 83 N. E., 865, 15 L. R. A. (N. S.), 282, not to exercise due care for his safety, so as to entitle him to recover for a resulting injury.

**Replevin.**—One attaching property of conditional vendees is held, in *Cavanaugh v. Marble*, 80 Conn., 389, 68 Atl., 853, 15 L. R. A. (N. S.), 127, to be entitled, in a replevin action by the vendor to recover possession thereof, to make any claim as to the misapplication of payments on a note given for the property levied on, that could be made by the vendees themselves.

**Libel.**—A newspaper article charging that a certain public officer and "graft" have become so thoroughly known as synonymous terms that the rank and file of the political party will have no more to do with him is held, in *State v. Sheridan* (Idaho), 93 Pac., 656, 15 L. R. A. (N. S.), 497, to be libelous per se, under a statute forbidding the publication of defamatory matter tending to impeach the honesty, integrity, virtue, or reputation of a person, and which exposes him to public hatred, contempt, or ridicule.

**Accident Insurance.**—That a person is "under the influence" of an intoxicant, within the meaning of an accident insurance policy limiting liability of the company in such cases, when he has recovered from intoxication only so far as to be fairly able to take care of himself, is declared in *Grinnell v. General Acci. Ins. Co.*, 80 Vt., 526, 68 Atl., 655, 15 L. R. A. (N. S.), 206.

Where an accident insurance policy provides that it does not cover loss of limb or sight, or disability resulting wholly or partly, directly or indirectly, from bodily or mental infirmity or disease in any form, proximate or contributory, as a primary, secondary, or final cause of the accident, injury, or death; and the insured, when not afflicted with any known physical or mental infirmity, unintentionally and accidentally sustained a cut on a finger from which blood at once issued, and through which wound and coincident therewith it became so infected that blood poisoning was at once introduced into the circulatory system of the insured, from the effects of which he died within five days of the accidental injury—the liability of the company was sustained in *Rheinheimer v. Aetna L. Ins. Co.*, 77 Ohio, St. 360, 83 N. E., 491, 15 L. R. A. (N. S.), 245.

Under a policy insuring against loss of time from bodily injuries effected through external, violent, and accidental means which shall disable the insured from engaging in any productive occupation, it is held, in *Aetna L. Ins. Co. v. Lassester* (Ala.), 45 So., 166, 15 L. R. A. (N. S.), 252, that no recovery can be had for hernia resulting from accident, where there is no external injury, disability, or loss of time.

**Mechanics' Liens.**—A materialman who furnishes material for the erection of a building under two separate contracts, and has knowledge of such contracts, is held, in *Valley Lumber & Mfg. Co. v. Driessel*, 13 Idaho, 662, 93 Pac., 765, 15 L. R. A. (N. S.), 299, to have no right to tack one contract to the other by filing his claim of lien within the required time from the date of furnishing material pursuant to one of the contracts.

Supplies for the construction of a railroad, within the meaning of a mechanics' lien statute, are held, in *Carson v. Shelton* (Ky.), 107 S. W., 793, 15 L. R. A. (N. S.), 509, not to include food for men and teams while at work thereon; and the fact that the contractor to whom it is furnished boards his own hands is held to be immaterial.

**Municipal Corporations.**—The liability of a municipality for private injury caused by the negligence of an employee in flushing a borough hydrant is sustained in *Judson v. Winsted*, 80 Conn., 384, 68 Atl., 999, 15 L. R. A. (N. S.), 91, where the flushing is an incident of its regular water service, but not where it is incident to its fire department service.

**Brokers.**—The right of a broker to commissions for procuring a loan to be secured by mortgage of real estate is sustained in *Silberberg v. Chipman* (Colo.), 93 Pac., 1130, 15 L. R. A. (N. S.), 187, although it is not completed because the lender, who is to be furnished with marketable title, demands an indemnity bond against mechanics' liens, the time for filing which has not elapsed, and refuses to take an inadequate cash deposit and written evidence that no liens exist in lieu of the bond.

A real estate agent authorized by express contract to sell property at a certain price is held, in *Ball v. Dolan* (S. D.), 114 N. W., 998, 15 L. R. A. (N. S.), 272, to have no right to recover on a quantum meruit for the value of his services in finding a purchaser who pays less than that sum, where the owner receives no benefit from the agent's services, although the agent is present and assists in the sale, and the owner changes the price.

**Corporations.**—That one can not avoid his contract to purchase stock of a corporation on the ground that it was not legally organized, or that the stock was not legally issued, is declared in *Burwash v. Ballou*, 230 Ill., 34, 82 N. E., 355, 15 L. R. A. (N. S.), 409.

A foreign corporation which at one time did business in the state, and has never complied with the requirements imposed by statute in such cases, is held, in *Boggs v. O. S. Kelly Mfg. Co.*, 76 Kan., 9, 90 Pac., 765, 15 L. R. A. (N. S.), 461, to be entitled, after it has ceased to do such business, to maintain an action upon a note taken by it while it was so engaged.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Helen Young Shepperd, Deceased.  
No. 15,149. Administration Docket 38.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Randolph Clay Murphey and Florence Sarah Hoyt, it is ordered, this 26th day of October, A. D. 1908, that William Patrick, Chester Patrick, and John Young Patrick, and the unknown heirs at law and next of kin of Helen Young Shepperd, and all others concerned, appear in said court on Monday, the 30th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner,  
Register of Wills for the District of Columbia,  
Clerk of the Probate Court. 44-3t

#### Legal Notices.

Alex. H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anthony Felder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of October, 1908. ANNA FELDER, 102 1st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,499. Administration. [Seal.] 44-3t

Jos. A. Burkart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Marie F. Selts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1908. JOS. A. BURKART, Corcoran Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,381. Administration. [Seal.] 44-3t

Millan & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William C. Eldridge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1908. MARY B. ELDRIDGE, 1356 Kenyon st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,574. Administration. [Seal.] 44-3t

Carlisle & Johnson, Solicitors  
In the Supreme Court of the District of Columbia.  
Millard F. Lynch v. James B. Smallwood et al.  
No. 23,028. In Equity.

The object of this suit is to have the title of the complainant to lot numbered six (6), in square numbered seven hundred and twenty-eight (728), in the city of Washington, District of Columbia, perfected by having his title by adverse possession decreed by the court. On motion of the complainant, it is, this 27th day of October, A. D. 1908, ordered that the defendants, James B. Smallwood and Mary H. F. Dobblyn, do cause their several appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. It is further ordered that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and [Seal] in The Washington Herald. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 44-3t

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cuthbert W. Ridley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of October, 1908. NATIONAL SAVINGS AND TRUST CO., by George Howard, Treasurer; J. LOUIS LOOSE, 1249 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,586. Administration. [Seal.] 44-3t

**Legal Notices.****Wm. E. Edmonston, Attorney.****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth D. Palmer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. **WILLIAM L. ROBINS**, 1700 18th st. N. W.; **WILLIAM B. PALMER**, 606 9th st. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,576. Administration. [Seal.] 44-3t

**Henry W. Sohon, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary A. Rodriguez, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. **PHILOMENA R. JOYCE**, FRANCES C. JOYCE, 1840 Vermont ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,577. Administration. [Seal.] 44-3t

**SECOND INSERTION.****W. Blair and G. Blair, Attorneys****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Virginia L. W. Fox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of October, 1908. **ELLEN C. DE Q. WOODBURY**; **WOODBURY BLAIR**, Corcoran Bldg.; **GIST BLAIR**; **MONTGOMERY BLAIR**. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,402. Administration. [Seal.] 43-3t

**John B. Lerner, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.****Estate of Julia E. McChesney, Deceased.****No. 15,527. Administration Docket 89.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 19th day of October, A. D., 1908, that **William P. Dolan**, (2) **James W. Dolan**, (3) **Belle Fretwell**, (4) **Thomas M. Dolan**, (5) **Edwin Dolan**, (6) **Freston Dolan**, (7) **James A. Dolan**, (8) **Mabel Dolan**, (9) **W. K. Jones**, (10) **George S. Jones**, (11) **Mrs. M. J. Flynn**, (12) **Mrs. Nina Elson**, (13) **Helen Jones**, and (14) **Lula Jones**, and all others concerned, appear in said court on Monday, the 23d day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT** Justice. Attest: **James Tanner**, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

[Seal]

Wills for the District of Columbia, Clerk of the Probate Court. 43-3t

**Legal Notices.****Notice of Petition for Change of Name by the Equitable Industrial Life Insurance Company.**

Notice is hereby given that the Equitable Industrial Life Insurance Company, duly incorporated under the laws in force in the District of Columbia, has filed its petition in the Supreme Court of the District of Columbia, being No. 28,102 in Equity, praying the court to change its name to the "Equitable Life Insurance Company," assigning as reasons therefor that as it has recently also engaged in the business of general life insurance, in conducting which its experience has been that the word "Industrial" in its corporate name is misleading, detrimental and an obstacle to its getting business. **EQUITABLE INDUSTRIAL LIFE INSURANCE COMPANY**, by **John S. Swormstedt**, President; **Allen C. Clark**, Secretary. 43-3t

**Frank S. Bright, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Thomas McGrain**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1908. **JOHN J. MCGRAIN**, 122 V st. N.W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,558. Administration. [Seal.] 43-3t

**Sheehy & Sheehy, Attorneys****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Margaret Walsh**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1908. **BERNARD LEONARD**, 532 4 1/2 st. S. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,545. Administration. [Seal.] 43-3t

**George H. Calvert, Jr., Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **Susanna M. Bond**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. **BENJAMIN F. SMITH**, by **Geo. H. Calvert, Jr.**, Attorney, 452 D st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,481. Administration. [Seal.] 43-3t

**Wm. D. Hoover, Attorney****Supreme Court of the District of Columbia,****Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Caroline Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. **NATIONAL SAVINGS AND TRUST COMPANY**, by **C. E. Nymann**, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,387. Administration. [Seal.] 43-3t

**Legal Notices.****THIRD INSERTION.****Henry H. Glassie, Attorney****In the Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Louise A. B. Hughes, Deceased.  
No. 14,188. Administration Docket 88.**

The notification as to the trial of the issues in this case relating to the validity of the paper writings, dated the 24th day of March, 1899, and the 28th day of June, 1900, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Dr. Arthur De Roaldes, Gladys Connolly, Augustus S. Hutchins, Waldo Hutchins, Pattie Weeks, Harry B. Dick, Charity L. Bowman, William Weeks Hall, minor; Rev. Edward J. Byrnes, Mrs. Kittie White, Dr. Homer J. Dupuy, James M. Dupuy, Mrs. Anna De Roaldes, James R. Randall, Countess Anita Maggolini, Carlo Maggolini, Margherita Maggolini, Woodlawn Cemetery of N. Y. City, Sisters of Bon Secours, Dr. John A. Irwin, Fannie Hewes, Martha Hoge, Charles Hiern, Clara C. Mitchell, Marion G. Wilson, Annie C. Grief, Sumter Calvert, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma L. Hewes Brown, Newton H. Hewes, Frederick S. Hewes, Jr., William H. W. Hewes, Francis G. Hewes, Henry L. Hewes, and Finlay B. Hewes, and the unknown heirs at law and next of kin of Louise A. B. Hughes, deceased, "not to be found," it is this 12th day of October, 1908, ordered that the issues be set down for trial on the 16th day of November, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writings were procured by fraud or undue influence, whether they were executed by said deceased, whether

[Seal] they were revoked, whether said deceased was of sound mind, etc. **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-41

**P. M. Brown and C. W. Clagett, Solicitors****In the Supreme Court of the District of Columbia.****James H. Taylor, Executor and Trustee, et al. v. Lucy A. Cunningham et al. Eq. No. 7,964.**

The object of this suit is to reform two deeds recorded in liber No. 601, at folio 142, et seq., and in liber 991, at folio 18, et seq., respectively, of the land records of the District of Columbia, so that the same may be made to pass an estate in fee simple to James H. Taylor, as executor and trustee under the will of Susan Poulton, deceased to the property described in said deeds namely, all that land and real estate situate in the city of Washington and District of Columbia, being described as follows, part of lot A in George C. Heron's subdivision in square three hundred and eighty-five (385) as per plat recorded in book W. F., page 140, surveyor's office, D. C., described as follows: Beginning for the same at the southeast corner of said lot, and running thence southwesterly along the north line of Maryland avenue, thirty-two and seventy-five hundredths (32.75) feet; thence northwesterly at right angles to said avenue sixty-nine and fifty hundredths (69.50) feet; thence north eight and forty-six hundredths (8.46) feet; thence northeasterly thirty and fifty hundredths (30.50) feet, to a point in the east line of said lot seventy-two and fifty-nine hundredths (72.59) feet northwesterly from the point of beginning, and thence southeasterly along said east line of said lot seventy-two and fifty-nine hundredths (72.59) feet to said avenue and the point of beginning. On motion of the complainant it is this 15th day of October, A. D. 1908, ordered, that the defendant, George W. Nichols, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 42-41

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.****R. F. Downing and G. A. Berry, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of James Cogan, Deceased.  
No. 15,530. Administration Docket 89.**

Application having been made herein for probate of the last will and testament of said deceased and for letters testamentary on said estate, by Bartholomew Daly, it is ordered this 15th day of October, A. D. 1908, that Michael Cogan and the unknown next of kin and heirs at law of James Cogan, deceased, it appearing to the satisfaction of the court that there are unknown next of kin and heirs at law of said deceased, and all others concerned, appear in said court on Thursday, the 26th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-31

**H. Ralph Burton, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.****Estate of Mary Cook Carter, Deceased.  
No. 15,525. Administration Docket —.**

Application having been made herein for letters of administration on said estate by Irene Carter, it is ordered this 14th day of October, A. D. 1908, that Frank Stevens Carter, and all others concerned, appear in said court on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald, once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-31

**William A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Henry Wells, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 2d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of October, 1908. **LAURA R. WELLS AND AMERICAN SECURITY AND TRUST COMPANY,** by William A. McKenney, Attorney. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,756. Administration. [Seal.] 42-31

**Gordon & Gordon, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, of the State of New York, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of **Mary E. Gennet,** late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. **ISADORE B. COOLEY,** care of Gordon & Gordon, Century Bldg. Attest: **JAMES TANNER,** Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,400. Administration. [Seal.] 42-31

Justice blanks of every description for sale at this office.

**Legal Notices.****Children & Fenning, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph E. Savary, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 13th day of October, 1908. JOHN SAVARY, 2329a N. St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,498. Administration. [Seal.] 42-3t

Wilton J. Lambert, Solicitor

**In the Supreme Court of the District of Columbia,  
Holding an Equity Court.**

Mary A. Moore et al. v. Roy J. Moore et al.  
No. 27,864. Equity Docket 61.

The object of this suit is to have partition made by sale and distribution of the proceeds among the parties entitled thereto of premises known as 618 M street northwest, and also part of original lots 8 and 9, in square 401, and two separate parts of original lot 5, in square 381, all formerly owned by John Moore, and any other part of said square 381, owned by the said John Moore at the time of his death; all of said property being situate in the District of Columbia. On motion of the complainants, it is, this 14th day of October, A. D. 1908, ordered that the defendants, Sarah V. Cary, Jessie Cary, and Charles Cary, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and the Washington Post before said day. JOB BARNARD, Justice. A true copy. [Seal] Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 42-3t

George H. Lamar, Attorney

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

Estate of Mary A. Jones, Deceased.  
No. 16,390. Administration Docket —

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Virginia B. Jones, it is ordered this 14th day of October, A. D. 1908, that C. Lucian Jones, T. Skelton Jones, Roger ap Catesby Jones, Gertrude L. Melvin, Catesby ap Catesby Jones, Mary Page Thompson, Mattie Moran Jones, Mary Wisner, Llewellyn ap Roger Jones, Katharine Lee Jones, Julian Stuart Jones, Cleo Jones and Page Jones, infant, and all others concerned, appear in said court, on Tuesday, the 17th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter, and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-3t

Edward L. Gies, Attorney

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Magdalena Elchner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. MICHAEL A. MESS, Room 318 Gen. Land Office. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,357. Administration. [Seal.] 42-3t

**Legal Notices.**

W. A. Johnston, Attorney

**In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**

In re Estate of William M. Starr, Deceased. Probate No. 15,102.

The notification as to the trial of the issues in the above entitled cause relating to the validity of the paper writing dated the 12th day of February, A. D. 1908, purporting to be the last will and testament of William M. Starr, deceased, having been returned non est as to Levi Morningstar, Hie Morningstar, Lavinia Bottruff, Louisa Moore, Lizzie Porter, Olla Bowler, Nancy Coleman, William Christie, Charles Morningstar, Rena Morningstar, Fritz Morningstar, Frank Morningstar, Cora Cain, Hannah Long, Eliza Meek, Susan Robins, Elliott Christie, Hannah Morningstar, Logan Morningstar and Ogden Morningstar, heirs at law and next of kin of William M. Starr, deceased, "not to be found," it is this 12th day of October, A. D. 1908, ordered that the issues be set down for trial on the 26th day of November, 1908, and a copy of the said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for four weeks in the Evening Star, of Washington, D. C. The substance of said issues is whether said paper writing was procured by fraud or undue influence, and whether said testator was of unsound mind on the 12th day of February, 1908, or if he executed said will whether he afterwards revoked it. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-4t

**Brandenburg & Brandenburg, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Annie Kimmel, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of October, 1908. EDWIN C. BRANDENBURG, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,544. Administration. [Seal.] 42-3t

**Brandenburg & Brandenburg, Solicitors  
In the Supreme Court of the District of Columbia.  
The Edes Home, a Corporation, v. Basil Waters et al.  
No. 27,622, Eq.**

The object of this suit is to quiet title and establish of record by adverse possession a good title in fee simple in the complainant to the north part of the lot of ground known as lot 221, in Beatty & Hawkins' addition to that part of the District of Columbia formerly known as Georgetown, and described as being the fifty-nine feet six inches on the west side of Market street and running back the full depth of said lot, more particularly described in the bill of complaint, and restrain and enjoin the defendants from setting up, claiming, or asserting any title thereto. On motion of the complainant, by its solicitors, Brandenburg & Brandenburg, it is this 23d day of September, A. D. 1908, ordered that the defendants, Basil Waters, Ignatius Waters, Zedock Waters, Mary A. Waters, Mary E. Waters, Lottie Waters, Hood Waters, Virginia Waters, Eliza Waters, William Waters, Susan Gibson and her husband, — Gibson; Agnes Gibson, Anna Dorsey and her husband, — Dorsey; Fannie Pennington and her husband, — Pennington; Agnes Gibson, James Gibson, Nanie Kimmel, Agnes Dorsey and her husband, Harry Dorsey; Sarah Dorsey, William A. Waters, Zechariah D. Waters, Washington Waters, Washington D. Waters, B. Worthington Waters, Thomas W. Waters, Ignatius Waters, T. Sollers Waters, Fannie W. Larner, if they be living, or, if any or all of them be dead, then the unknown heirs, allenees, or devisees of any or all of them, cause their appearance to be entered herein on or before the first ruleday occurring three months after the date of the expiration of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three consecutive months in The Washington Law Reporter and The Evening Star before said date. By the [Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept. 25; oct. 2, 30; nov. 6, 27; dec. 4.

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Proceedings to Condemn Land for Sewers; Power of District Commissioners to Institute.

In Macfarland v. Elverson, the appeal was from an order of the court below dismissing a petition filed by the Commissioners of the District of Columbia seeking to condemn a right of way for a sewer. The case involved the construction of section 483 of the Code, authorizing proceedings by the Commissioners to condemn land for "sites of school-houses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress." It was contended by the appellee, and sustained by the court below, that this power can be exercised by the Commissioners only when specially authorized by Congress. It was contended for the appellants that the words in the section, "authorized by Congress," limit only the words "or for any other municipal purpose," and did not refer to proceedings to condemn land for school-houses, fire or police stations, or rights of way for sewers; and

with this contention the Court of Appeals agrees, and reverses the judgment. Mr. Justice Van Orsdel delivered the opinion of the court.

#### Contracts; Insurance; Election of Insurer to Repair Property; Limitations.

In Winston v. Arlington Fire Insurance Company, the plaintiff had a policy with defendant company by the terms of which defendant had the right, in event of loss, to elect to repair the property. The declaration alleged that a loss had occurred, which defendant undertook to repair, including the replacing of a metal roof on the house with one of like quality; and that it failed to replace said roof with one of like quality, but put an inferior one thereon so that the house became uninhabitable. Defendant, among other defenses, pleaded that by the terms of the policy an action on the policy must be commenced within twelve months from the date of loss, and that the action was not brought within that period. Plaintiff demurred to the plea, but the demurrer was overruled, and electing to stand upon his demurrer, judgment was rendered for defendant. This judgment is reversed by the Court of Appeals, in an opinion by Mr. Chief Justice Shepard, holding that the action was not upon the contract of insurance, but upon the failure of defendant to perform the new undertaking created by its election to repair the property.

#### Contracts; Superintending Construction of Building; Compensation; Evidence.

In Ferry v. Henderson, the plaintiff sought to recover for services rendered in superintending the construction of a building, and for money expended for defendants. He obtained a judgment, and the defendants appealed. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment on the ground that certain evidence offered by defendants was erroneously excluded. No ground of objection to such evidence was stated by the plaintiff when it was offered, nor did the defendants specifically state its purpose, nor what they expected to prove; but the Court of Appeals holds that the exceptions, under the circumstances of the case, might be considered, and that the evidence was competent.

#### Equity; Suit to Set Aside Assignment of Cause of Action.

In Merillat et al., trustees, v. Hensey et al., the suit was to set aside an assignment of a cause of action on the ground that it was made with intent to hinder, delay and defraud other creditors. It appeared that one of the defendants, as plaintiff in an action on a bond of indemnity had, pending the suit and before judgment, assigned his cause of action to his codefendants in the equity suit, and by the terms of the assignment the assignees



were to pay out of the amount recovered the costs and attorney's fees, then to themselves the amount of their claims against the assignor, and the balance, if any, to the assignor. The amount recovered was not sufficient to pay the assignees' claims. The present proceeding to set aside the assignment was subsequently brought. The trial court dismissed the bill, and its decree is affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb.

**Police Regulations; Muzzling Dogs.**

In *French v. District of Columbia*, the validity of a police regulation of this District imposing a fine in case of conviction for permitting a dog to run at large without being securely muzzled was involved. The Court of Appeals upholds the validity of the regulation and affirms the judgment of the Police Court, in an opinion by Mr. Justice Robb.

**Wills; Construction of Provision.**

In *Galloway v. Galloway*, the appeal was from a decree of the court below in a suit to construe a will. By the will the testatrix devised a house and lot to her daughter in fee, and further gave her all "household furniture, clothing, and personal effects absolutely." To each of two sons she gave \$5. Subsequent to the date of the will the testatrix sold the house, and the proceeds, with other moneys, were in bank to her credit at her death. One of the sons claimed a one-third interest in the proceeds from sale of the house, on the ground that the devise was revoked by the sale, and that there was no residuary clause in the will. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, reversing the court below, holds that the term "personal effects" was intended to and did embrace all the residue of the estate after payment of the sums specifically given the sons by the will.

**Building Regulations; Height of Buildings; Refusal to Issue Permit; Damages.**

In *Berry v. District of Columbia*, the appeal was from a judgment entered upon an agreed statement of facts in an action by the appellant to recover damages incurred by the refusal of defendant to permit him to proceed with the erection of an apartment house of the proposed height of 110 feet at the corner of two residence streets in this city. When the matter was first presented to the Commissioners it was approved by them, although the height of buildings in residence streets was by the regulations limited to 90 feet. Subsequently, plans were made to erect the building, a permit was refused, and appellant sued to recover damages incurred, including architects' fees, traveling, and other expenses. The trial court entered

a judgment for defendant, and this judgment is affirmed by the Court of Appeals in an opinion by Mr. Chief Justice Shepard, which holds that the first action of the Commissioners was beyond their authority.

**Negligence; Personal Injuries; Excavation in Sidewalk; Notice.**

In *District of Columbia et al. v. Blackman*, the appeal was from a judgment for plaintiff in an action for personal injuries sustained by falling into a hole in a sidewalk. The judgment, as against the District of Columbia, was reversed, on the ground that no negligence on its part was shown, nor any ground for imputing to it knowledge of negligence on the part of the other defendants, and as against the latter was affirmed, in an opinion by Mr. Justice Robb.

Opinions were also filed in four other cases which are reported in full in this issue.

**Contempt.**—Wilful failure of an attorney to be present in court on the calling of his case which he has had adjourned, and wilful failure to return promptly when thereafter excused for a few minutes to attend to a case in another court, is held, in *Ex parte Clark*, 208 Mo., 121, 106 S. W., 990, 15 L. R. A. (N. S.), 389, to be a criminal contempt, for which he can not be punished without notice and reasonable time in which to make his defense.

That contempt is not the proper remedy against one who publishes a newspaper article reflecting on the conduct of a judge in the performance of the ministerial duty of keeping account of the fees, emoluments, expenses, etc., of his office, is declared in *Hamma v. People* (Colo.), 94 Pac., 326, 15 L. R. A. (N. S.), 621 although the publication may interfere with and embarrass the administration of justice, and tend to bring the court and judge into disrepute, destroying public confidence in both and impairing their usefulness.

**Contracts.**—That one is not bound by a mere promise to pay the debt of another, unless the promise be in writing, signed by the promising party, is held in *Mankin v. Jones* (W. Va.), 60 S. E., 248, 15 L. R. A. (N. S.), 214.

An oral contract to cut the timber off a tract of land as fast as it is needed by the owner's mill is held, in *White v. Fitts*, 102 Me., 240, 66 Atl., 533, 15 L. R. A. (N. S.), 313, to be void under the statute of frauds, although all the wood might be cut off within a year, where the mill running in its ordinary capacity would require three or four years to work it up. The other authorities on effect of statute of frauds upon oral contracts for services which may, but are not intended to, be performed within a year, are reviewed in a note to this case.

A contract by a railroad company to locate a station at a given point is held, in *Atlanta & W. P. R. Co. v. Camp* (Ga.), 60 S. E., 177, 15 L. R. A. (N. S.), 594, not to be per se void, but to be enforceable against the company so long as it is possible for it to discharge the duties owed by it to the public and at the same time discharge the duties incumbent upon it by the contract.

## Court of Appeals of the District of Columbia

THE UNITED STATES EX REL. COLUMBIA HEIGHTS REALTY COMPANY, APPELLANTS,

v.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

SUBDIVISION OF LAND; REFUSAL OF COMMISSIONERS TO APPROVE BECAUSE ASSESSMENTS NOT PAID; MANDAMUS.

1. The regulation adopted by the Commissioners of this District, making the payment of all taxes, special assessments, and other public charges upon property, the subdivision of which is sought to be approved and recorded, a condition precedent to such approval, is a valid exercise of the power conferred by the act of Congress of August 27, 1888.
2. A petition for mandamus to compel the Commissioners to approve and permit the record of a plat of a subdivision of lands in this District denied where it appeared that there were unpaid special assessments against the property embraced in the proposed subdivision.

No. 1950. Decided November 4, 1908.

APPEAL by relators from a judgment of the Supreme Court of the District of Columbia, No. 50,712, dismissing a petition for a writ of mandamus. Affirmed.

Mr. C. A. DOUGLASS and Mr. E. B. SHERRILL for the appellants.

Mr. E. H. THOMAS for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

The relator has appealed from an order of the Supreme Court of the District dismissing its petition for mandamus to compel the Commissioners of the District of Columbia to approve a plat of a subdivision of lands and permit the same to be recorded in the surveyor's office.

It appears that the relator, a corporation organized under the laws of the State of New Jersey, is the owner in fee simple of many lots in Block 27, Columbia Heights. That on June 1, 1908, being desirous to subdivide said lots into smaller ones, it prepared a plat of the same, which is in conformity with the general plan of the city of Washington. Said plat was submitted to the Commissioners on June 5, 1908, for approval. They declined to approve the same on the ground that there were certain unpaid assessments on the lands contained therein.

The said plat was made an exhibit to the petition. Without setting the same out, it is sufficient to say that it, and the plat in the cause, No. 1949, submitted at the same time, show that one or more streets and alleys of the legal width, are laid out across the lots where there had been none before the proposed subdivision.

The answer to the rule to show cause why the writ of mandamus should not issue as prayed, alleges:

1. That the Code of the District of Columbia prohibits the organization of corporations for the purpose of buying, selling and dealing in real estate, and that as the relator's charter, a copy of which is attached, shows that the relator was organized in New Jersey for that purpose, it is not entitled to carry on such a business in the District.

2. That in proceedings relating to the opening and improvement of 11th street, assessments were levied upon the lots in question, in the year 1899, which have been confirmed by decrees of the Supreme Court and Court of Appeals of the District of Columbia; and although appeals have been prosecuted therefrom to the Supreme Court of the United States, the said decrees were not superseded. It appears that said assessments amount to a large sum in gross, assessed against the lots in question as originally designated, and constitute liens thereon for which they may be sold. It appears also that the titles to said lots have been acquired by the relator by purchase from their several owners, since said assessment was made.

This second ground of refusal to approve the new survey and plat is founded on a clause of the regulations of the Commissioners, in effect since May 15, 1899, which makes the payment of "all taxes, special assessments, and other public charges upon the property," the subdivision of which is sought to be approved and recorded, a condition precedent to said approval. The Commissioners allege in their answer that this condition is necessary to regulate the platting and subdivision of lands, because the collector of taxes can not receive a proportionate part of an entire tax; the Commissioners are not allowed by law to abate any tax or exempt any property from taxation; they have no means to apportion a tax; the collector can not sell any property except as assessed; there is no method provided by law for the re-assessment of said benefits according to the proposed subdivision; and they can not alter or amend the verdict or judgment establishing the same.

The main question for determination is whether the Commissioners were invested by Congress with the power to make any such regulation.

Sections 1 and 2 of the act of August 27, 1888, under which said regulation, among others, was promulgated, read as follows:

"Sec. 1. That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia; and no such plat of subdivision made in pursuance of such orders shall be admitted to record in the office of surveyor of said District without an order to that effect indorsed thereon by the Commissioners of said District.

"Sec. 2. That all spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with the provisions of section 1 of this act, and as such be under the protection of the laws and ordinances in force applicable to public roads out of said city."

Section 4 provides that the orders of the Commissioners, made pursuant to this act, shall have the force and effect of law thirty days subsequent to the day of publication.

Section 5 further provides that no subdivision shall be recorded unless made in conformity with the general plan of the city of Washington. Sections 1, 2, and 5 of the act aforesaid were substantially re-enacted in the Code which went into effect January 1, 1903 (see sections 1601, 1602, 1603), nearly three years after the promulgation of the regulations.

It is well settled that the Commissioners are ministerial officers, who may, in the discretion of Congress, be invested with the power to make rules and regulations concerning local affairs. *Walter v. MacFarland*, 27 App. D. C., 182, 184, 185; 34 Wash. Law Rep., 238. In that case it was said: "Municipal governments exist and exercise authority through legislative sanction. For convenience of administration they are created as agents of government for certain local purposes, and have such powers only as are expressly conferred or may be fairly and reasonably implied as necessary to carry into effect such as have been expressly granted." See also *Daly v. MacFarland*, 28 App. D. C., 552, 558; 35 Wash. Law Rep., 81.

Tested by this rule, we are of opinion that the regulation was within the power of the Commissioners. The acts of Congress conferring the power in the cases above cited were very different in their tenor and purpose from that relied on in this case. In the *Walter* case, the Commissioners, under the power to control and repair streets, undertook to narrow one of the original streets of the city. As was said, if this power be implied then it may be exercised in all of the streets and avenues, to any extent short of closing one of them completely; and it is so great and far reaching in its consequences, not only to the abutting lot owners, but to the general public also, that it could not reasonably be inferred that Congress had contemplated its extension through the general power to control and repair. In *Daly v. MacFarland* the several acts relating to the subject-matter were comprehensive in their details and cover, as the court said, "not only the licensing of plumbers, and the practice of plumbing, but also specify the authority of the Commissioners in respect thereto."

Section 1 of the act under consideration contains a broad grant of power to the Commissioners to make all general orders necessary to regulate the platting and subdividing of all private property, subject to the one limitation of section 5 that all subdivisions shall be in conformity with the general plan of the city of Washington. It is evident that Congress deemed it expedient to leave all other details in respect of the subject-matter to the discretion of the Commissioners, and hence conferred a broad power which includes within it all other powers necessary to carry out the general object—that is to say, all powers germane to the object and reasonably necessary to effectuate it with due regard to the public and private interests involved. That the power exercised in this instance was a reasonable one, we think is sufficiently clear. Before the enactment of the act the opening of streets with assessments for damages, as well as benefits incurred by adjacent property, had been frequent, and was likely to increase rather than diminish in frequency. The property embraced in this subdivision had been assessed for benefits and the same had been fastened as liens upon the several lots, for which they could be sold to the tax collector. Grant that the lien would necessarily follow any portion of a formerly designated lot into the new arrangement of boundaries and divisions provided in the subdivision, and that the collection thereof might still be fully enforced; nevertheless the difficulties in the way, that may well be apprehended, would be many and serious. But a far greater difficulty and apparently an insuperable one, would result from the necessary

operation of section 2 of the act. This provides that all streets, avenues, and alleys designated in the subdivision shall become public ways, provided that they are made in conformity with the provisions of the preceding section. See also Code, section 1602. The effect of this dedication of the property to the public—the United States—would be to exempt such parts of the former lots as are contained in the streets and alleys from the assessment, under the provisions of the act approved March 3, 1903 (32 Stats., 961). The result of this would be to extinguish the assessment in case a lot be wholly occupied by the street, or if not wholly occupied, to cast the entire burden, probably, upon the remaining portions not contained in the street. In the latter event further delay and litigation would naturally follow. But let it be assumed, for the purpose of the argument only, that the act last mentioned would not apply to assessment liens, upon the parts of lots designated as streets and alleys secured prior to their dedication to public use. In that event the designated street would pass into private ownership through sale for the enforcement of the lien and thereby cease to be a public way. Such a result would destroy the very purpose of the subdivision and its approval, and work irreparable mischief to persons who might purchase the newly designated lots on the faith of the approval and record of the subdivision. It is contended, however, that the mere approval and record of the subdivision could not effect such dedication of the streets designated therein, but there would have to be a further act of acceptance of the dedication by the Commissioners or by Congress. The express terms of the section refute this argument, and it has no support in the decision relied upon. *Watson v. Carver*, 27 App. D. C., 555, 559; 34 Wash. Law Rep., 483. That decision, in fact, upholds the view above expressed of the operation of the section. The alley, the right to the use of which was in controversy between private owners, had been designated by the former owner in a subdivision made by him and recorded, and used as a private way. It was only five feet in width. As was said in the opinion, it was "a mere cul de sac, of no use to the public and by the public never used." The order then in force also required all public alleys to be not less than ten feet in width. In the discussion of the point, the court, speaking through Mr. Justice Duell, said:

"We have seen that an act of Congress governs the creation of public ways in the District of Columbia; that the Commissioners of the District are vested by said act with the power to regulate the plotting and subdivision of lands in the District, and to that end may make general orders; and that the provisions of said act must be complied with in order that the streets, avenues, or alleys designated on recorded plats of lands become public ways. It further appears that in conformity with the said act the Commissioners of the District, on May 20, 1895, had adopted an order requiring public alleys to be not less than ten feet in width. Such order was in force when Caldwell recorded his subdivision of lot 14, and no modification of, or special exception to the order is shown to have been made which would authorize the acceptance of the proposed alley, which concededly was only five feet in width. We are of the opinion that in the absence thereof the proposed alley did not become a public way, that the pub-

lic acquired no right of way over it, and that no title vested in the United States."

In view of the conclusion reached on this point, it is unnecessary to consider the interesting question raised by the Commissioners as to the right of the relator to claim recognition in the District of Columbia in the enforcement of rights asserted under public authority.

We are of the opinion that the regulation was within the power extended to the Commissioners and, consequently, that the court was right in ordering that the rule be discharged and the petition dismissed. The judgment must, therefore, be affirmed with costs; and it is so ordered.

Affirmed.

THE UNITED STATES OF AMERICA EX REL.  
COLUMBIA HEIGHTS REALTY  
COMPANY, APPELLANTS,

v.

HENRY B. F. MACFARLAND, ET AL.

No. 1949. Decided November 4, 1908.

APPEAL by relators from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,711, dismissing a petition for a writ of mandamus. Affirmed.

Mr. C. A. DOUGLASS and Mr. E. B. SHERRILL for the appellants.

Mr. E. H. THOMAS for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This case is identical with No. 1950, between the same parties, and was submitted therewith. For the reasons given in the opinion in that case the judgment is affirmed with costs.

Affirmed.

**Evidence.**—Declarations of one of the parties to an alleged marriage the fact of which is in issue, since deceased, made pending the period of cohabitation, disaffirming the marriage, are held, in *Drawdy v. Hesters* (Ga.), 60 S. E., 451, 15 L. R. A. (N. S.), 190, to be admissible under the principle of *res gestæ* for the purpose of showing the character of the cohabitation, where cohabitation is relied upon as a circumstance material to the issue.

In an action against a physician for death alleged to have been occasioned by the negligent administration of chloroform, it is held, in *Boucher v. Larochelle* (N. H.), 68 Atl., 870, 15 L. R. A. (N. S.), 416, not to be necessary, in order to recover, to exclude other possible causes of death, it being sufficient to show that this was the probable cause.

Dying declarations are held, in *State v. Hood* (W. Va.), 59 S. E., 971, 15 L. R. A. (N. S.), 448, not to be inadmissible because it does not appear that the declarant believed in God, and rewards and punishment after death.

Upon the question whether or not a representation by an applicant for insurance that he was temperate in the use of intoxicating liquors was false, it is held, in *Taylor v. Security Life & A. Co.*, 146 N. C., 383, 59 S. E., 139, 15 L. R. A. (N. S.), 583, that witnesses may, after stating the basis of their information, state whether he was temperate or intemperate.

Court of Appeals of the District of Columbia.

W. T. WALKER FURNITURE COMPANY, A  
CORPORATION, APPELLANT,

v.

WILLIAM H. DYSON.

PRACTICE; GENERAL EXCEPTION; CONDITIONAL SALE; BREACH OF CONDITION; RIGHT OF VENDOR TO RETAKE PROPERTY; TRESPASS.

1. An exception to the charge of the trial court "on the ground that the same was contrary to law" is too general to avail the appellant.
2. A clause in a contract for the conditional sale of personal property authorizing the vendor to enter the premises of the vendee and take possession of and remove the goods mentioned in the contract, upon a breach by the vendee of the terms thereof, constitutes an irrevocable license coupled with an interest.
3. Where, in such a case, there has been a breach of the conditions of the contract, and the vendee resists the exercise by the vendor of the right given to enter upon his premises and take possession of the property, the vendor is justified in using such force as may reasonably be necessary to overcome such resistance, and is liable only when the force used was excessive.

No. 1906. Decided November 4, 1908.

APPEAL by defendant from a judgment of the Supreme Court of the District of Columbia, at Law, No. 48,579, entered upon the verdict of a jury in an action of trespass. Reversed.

Mr. L. A. BAILEY for the appellant.

Mr. R. B. DICKEY and Mr. JOHN RIDOUT for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is a suit in trespass on a declaration in which plaintiff averred that on May 25, 1906, he was the owner and possessor of certain household goods and furniture then lawfully in his possession and daily use in his dwelling-house and home in this city, and that the defendant through its officers, agents and employees, on that day, with force and arms wrongfully came upon said premises and into said dwelling-house and home, and wrongfully and unlawfully took and carried away said furniture.

The defendant interposed a plea of not guilty, and also averred a conditional sale between it and the plaintiff under the terms of which the goods mentioned in the plaintiff's declaration were the property of the appellant, the title to said goods being reserved until plaintiff had paid the stipulated sum of \$66, for all of said goods, and that the amount then paid was \$53, leaving a balance due of \$13; that under the terms of said conditional sale the defendant was authorized and empowered to take possession of said goods and remove the same and retain as rent for said goods all moneys theretofore paid on said contract by the plaintiff; that plaintiff in said contract agreed to "waive, relinquish and release any trespass and right of action for damages whatsoever, which he could or might have against the defendant by reason of any matter or thing done in obtaining possession of said chattels."

The evidence of the plaintiff tended to show full payment for the furniture and compliance with the terms of the contract, and that the defendant's agents forcibly entered and carried away most of said furniture.

The defendant introduced the contract described in its plea, and its evidence tended to show a balance due under the contract, and that no more force was used in retaking the furniture than was reasonably necessary.

The plaintiff obtained a verdict and judgment in the sum of \$171.25 and defendant appealed.

At the close of the court's charge to the jury the defendant excepted to each part thereof "on the ground that the same was contrary to law." This exception was clearly too general to avail the defendant here. He should have stated the specific grounds for his exceptions, and thereby given the trial court an opportunity to pass upon them. If parties are to be permitted to avail themselves of such general exceptions, it is apparent that a reversal of a case may be asked on grounds not suggested to or considered by the trial court. This question has so recently been adverted to that it is not necessary to pursue it further here. *McDermott v. Severe*, 202 U. S., 600, affirming 25 App. D. C., 276; 33 Wash. Law Rep., 226; *Brown v. Sav. Bank*, 28 App. D. C., 353; 34 Wash. Law Rep., 800; *District of Columbia v. Duryee*, 29 App. D. C., 327; 35 Wash. Law Rep., 254.

The appellant specifies as error the refusal of the trial court to instruct the jury:

"That if upon all the evidence they believed that the goods taken by the defendant's employees were part of the goods received by the plaintiff from the defendant under the contract mentioned in the testimony, and that at the time of such taking the plaintiff had paid under said contract not more than \$56, and that in entering the plaintiff's house and in the taking and removal therefrom of said goods by the defendant's employees they had used only such force as was reasonable and necessary, the verdict should be for the defendant."

That the clause in the contract authorizing the vendor to enter the premises of the vendee and take possession of and remove the goods mentioned in the contract, upon a breach of the terms thereof, constituted an irrevocable license coupled with an interest, is not open to question. The question, therefore, for determination is, whether one who has given such a license can recover in trespass in a case where he wrongfully interposed resistance, and the vendor used only such force as was reasonably necessary in overcoming such resistance.

In the early case of *Wood v. Manley*, 11 Adol. & Ell., 34, the plaintiff sold a quantity of hay then on his land to the defendant, with license to enter and take the same. Subsequently plaintiff served upon defendant a written notice not to enter or commit any trespass on plaintiff's premises. The plaintiff having locked his gate, the defendant broke open the same, entered, and carried away the hay. Lord Denman, C. J., in passing upon the case, said: Mr. Crowder's argument goes to this length, that if I sell goods to a party who is by the terms of the sale to be permitted to come and take them, and he pays me, I may afterwards refuse to let him take them. The law countenances nothing so absurd as this. A license thus given and acted upon is irrevocable."

*Hodgden v. Hubbard & Ayers*, 18 Vt., 504, was as action for assault and battery brought by one who had fraudulently obtained possession of certain personal property, and from whom such property had been forcibly retaken by agents of

the vendor. The court said: "Whoever is guilty of a breach of the peace, or of doing unnecessary violence to the person of another, although it may be in the assertion of an unquestioned and undoubted right, is liable to be prosecuted therefor. But the fraudulent possessor is not the protector of the public interest. . . . The plaintiff had no lawful possession, nor any right to resist the attempt of the defendants to regain the property, of which he had unlawfully and fraudulently obtained the possession. By drawing his knife he became the aggressor, inasmuch as he had no right thus to protect his fraudulent attempt to acquire the stove, and the possession of the same, and it was the right of the defendants to hold him by force, and if they made use of no unnecessary violence, they were justified; if they were guilty of more, they were liable."

In *Walsh v. Taylor*, 39 Md., 592, the facts were quite similar to the facts in this case. The court said: "The contract, the construction of which was for the court, plainly gave the defendant an irrevocable license, or rather, a license coupled with an interest; and, as such, the plaintiff could not withdraw from it, and hold the defendant as a trespasser for doing what she had agreed he might do with impunity."

*Lambert v. Robinson* (162 Mass., 34) was an action in tort for entering and breaking plaintiff's close and for assault. The plaintiff was in possession of certain articles of household furniture under an agreement, the terms of which were similar to the terms of the agreement in the present case. The acts complained of were committed by the defendant in retaking the furniture. The court ruled that the defendants having a right to enter and remove the furniture were entitled to use such force as was reasonably necessary, and that they were only liable in case they used excessive force, and "that a person who has a right to enter upon the land of another and there do an act may use what force is required for the purpose, without being liable to an action. If he commits a breach of the peace, he is liable to the commonwealth. If he uses excessive force, he is liable to a personal action for assault."

To the same effect are *White v. Elwell*, 43 Me., 360, and *Willoughby v. Railroad Co.*, 32 S. C., 410.

Jones, in his *Treatise on Landlord and Tenant* (at paragraph 558), says: "It may be stated as a general rule that though an entry by force might subject a landlord to penalties for a breach of the law criminally, it confers no right of action on the tenant thus holding without any right of possession" . . . (paragraph 561). The Colorado statute takes away the right that existed at common law to make entry by force, although the right of possession may exist. Yet a license reserved in the lease to make such an entry does not contravene the statute, and under such a provision the landlord may enter and remove a tenant upon condition broken, if he use no unnecessary force to accomplish his purpose." The same author alludes to the rulings in *Ambrose v. Root* (11 Ill., 497), and *Fabbi v. Bryan* (80 Ill., 182), to the effect that, although courts will not lend their aid to enforce a contract to accomplish something prohibited by law, an agreement authorizing an entry without liability as a trespasser for the use of force is not an agreement to do an unlawful act, and that a party acting under such a contract

would be liable criminally for a breach of the peace, but not liable in a civil action for assault and battery.

In this case the plaintiff authorized the defendant to retake the goods in the plaintiff's possession upon a breach of the conditions of the contract. If the jury should find that a breach of the contract had occurred, and that the defendant used only such force as was reasonably necessary in overcoming the resistance the plaintiff thus wrongfully interposed, the plaintiff is not entitled to recover in this action. If, on the other hand, the jury should determine that there had been no breach of the terms of the contract, and that the plaintiff had paid for the furniture, then the defendant was a trespasser and liable to respond in damages.

Such contracts are burdensome and often oppressive, but, in the absence of fraud, the vendee is himself responsible for the situation, for he signed the contract. The liability to original prosecution and the certainty of being required to respond in damages for an abuse of the license thus obtained, will deter vendors from the use of force.

The defendant was entitled to the instruction requested, and, therefore, the judgment must be reversed with costs and the case remanded for a new trial.

Reversed.

**Checks.**—Failure to present a check in due course for payment is held, in *Start v. Tupper* (Vt.), 69 Atl., 151, 15 L. R. A. (N. S.), 213, to discharge the indorser, even though such presentment would have been unavailing, in the absence of affirmative proof that he knew when he passed the check that there would be no funds in the bank to meet it.

**Bills and Notes.**—A memorandum written on the back of a promissory note at the time of execution, which limits its consideration, affects its operation, and was intended to be a part of the contract, is held, in *Kurth v. Farmers' & M. State Bank* (Kan.), 94 Pac., 798, 15 L. R. A. (N. S.), 612, to be regarded as a substantive part of the note.

**Elevators.**—That it is the duty of an elevator operator who knows that a boy is riding on top of the car to use ordinary care to prevent his injury, even if he is treated as a trespasser, is declared in *Davis v. Ohio Valley B. & T. Co.* (Ky.), 106 S.W., 843, 15 L. R. A. (N. S.), 402; and the master is held to be liable for the former's failure to do so, although at the precise moment of the injury the operator may not actually know that the boy is in danger, where he can ascertain that fact by looking.

**Principal and Agent.**—To make one liable by reason of participation in misuse of money of the principal by an agent upon the ground that it was used to pay the private debt of the agent, it is held, in *Perry v. Oerman* (W. Va.), 60 S. E., 604, 15 L. R. A. (N. S.), 310, to be necessary to show, not only that the party sought to be charged was aware that the money belonged to the principal, but also that he was aware that the debt paid by it was in fact a private debt of the agent, or such a debt that payment thereof could not lawfully be made out of such money.

## Court of Appeals of the District of Columbia.

SYLVIA MARIA STADIN ET AL., APPELLANTS,

v.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE INTERIOR, ET AL.

No. 1939. Decided November 4, 1906.

APPEAL by relators from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,345, dismissing a petition for a writ of mandamus. Affirmed.

Mr. W. L. FURBESHAU for the appellants

Mr. D. W. BAKER and Mr. STUART MCNAMARA for the appellees.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

This suit arose in the Supreme Court of the District of Columbia upon a petition of appellants for a writ of mandamus directed to the appellees, defendants below, as Secretary of the Interior and Commissioner of the General Land Office of the United States, respectively, directing them to issue a patent to the appellants for certain lands hereafter described. It appears that on November 22, 1898, one Maria G. Stjornstrom made an original homestead entry at the United States Land Office at Oregon City, Oreg., for a tract of unappropriated public land situated in that State containing one hundred and sixty acres. On July 9, 1900, Maria G. Stjornstrom died, leaving three children, one of whom, a son, was over twenty-one years of age, and the other two, the appellants, were minors. Neither the entrywoman nor any one legally representing her ever lived upon or cultivated the land. On January 10, 1906, one Albert M. Smith initiated in the Land Department a contest proceeding against said entry alleging the death of Maria G. Stjornstrom, her failure to comply with the law during her lifetime, the failure of the heirs to make such compliance, and that final proof had not been submitted within the time required by law. On hearing, after due notice to the heirs, a decision was rendered by the local land officers adjudging the entry forfeited and recommending its cancellation. Its judgment was affirmed by the Commissioner of the General Land Office, and, upon appeal, by the Secretary of the Interior. On February 14, 1908, Smith, the contestant in the proceedings had before the Land Department, was permitted, under his preferred right as the successful contestant, to purchase the land here involved, under the act of Congress of June 3, 1878 (20 Stats., 89), and acts amendatory thereof. No patent has been issued to Smith. Upon these facts, it is claimed by the appellants that upon the death of the mother, the right in fee to the land in question passed to, and vested in, the appellants as the minor children of the deceased entrywoman.

In the court below, respondents duly answered the petition of appellants, petitioners below, and set up the facts substantially as above recited. Counsel for petitioners demurred to the answer. The demurrer was overruled, and, counsel electing to stand upon his demurrer, the court entered



judgment for the respondents, from which judgment this appeal is prosecuted.

The provisions of the law relative to the acquiring of title to lands entered under the homestead law, and which are material to the consideration of this case, are as follows:

"Sec. 2291. No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law."

"Sec. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office fees and sum of money above specified."

It is admitted that the adult heir of Maria G. Stjornstrom did not attempt to comply with the law by residing on or cultivating the land, and that he has lost all his rights in the premises; but it is contended that the law did not impose upon him the duty of protecting the rights of the minor heirs, and that the minor heirs could not lose their rights by any act, or failure to act, of the adult heir. In other words it is contended by counsel for appellants that the title vested in them immediately upon the death of the mother, under the provisions of section 2292, *supra*, and that their rights could not be affected in any way by the action of the adult heir.

Upon this point, and this alone, the case turned in the court below. We think there need be no difficulty in sustaining the judgment there rendered. In the case of *Bernier v. Bernier* (147 U. S., 242), the court in an elaborate opinion, construed section 2292 in connection with the preceding section, and held that it was only intended to give the fee to the minor heirs when there were no other heirs. The language of the court is clear and will admit of no misunderstanding. In the opinion the court said: "We are of opinion that the construction claimed by the complainants is the true one. Section 2291 provides that the certificate and patent, in case of the death of father and mother, shall, upon the proofs required being made, be issued to the heirs of the deceased party making the entry, a provision which embraces children that are minors as

well as adults. Section 2292, in providing only for minor heirs, must be construed, not as repealing the provisions of section 2291, but as in harmony with them, and as only intended to give the fee to the lands to the minor children exclusively when there are no other heirs. This construction will give effect to both sections, and it is a general rule, without exception, in construing statutes, that effect must be given to all their provisions if such a construction is consistent with the general purposes of the act and the provisions are not necessarily conflicting." Here, the appellants, the minor children of Maria G. Stjornstrom, were not the only heirs. There was an heir over 21 years of age. Hence, the provisions of section 2292 can not under any circumstances be applied to this case.

A serious question has been raised as to the jurisdiction of the Supreme Court of the District of Columbia to entertain an action for a writ of mandamus against the Secretary of the Interior in a case of this kind, where the title to the land in question has not passed from the United States, but still remains in the Government. Inasmuch as this question was not considered by the court below, we do not deem it essential to a determination of the case to consider it here.

The judgment is affirmed with costs, and it is so ordered.

Affirmed.

#### **Corporations; Estoppel of Creditors to Deny Corporate Existence.**

The United States District Court for the Northern District of Texas recently held (*In re Western Bank and Trust Co.*, 163 Fed., 713) that where an association for years conducted a banking business as a corporation in the belief that it was legally incorporated, issuing stock which was purchased by the stockholders in good faith and in the bona fide belief that it was a corporation, persons who dealt with it as such are estopped to deny that it was a corporation and to charge such stockholders with liability as partners. The court said on this point:

3. Aside from the question of the existence or nonexistence of the Western Bank & Trust Company as a *de facto* corporation, there is a question here as to whether, because of previous conduct inconsistent therewith, petitioning creditors are not now precluded from asserting that it is not a corporation. The Western Bank & Trust Company opened its doors in the city of Dallas to do a banking business on February 2, 1903, and continuously conducted such business until its doors were closed on January 15, 1908. With the advice of counsel as to each step necessary to the legitimate accomplishment of that end, the concern was founded upon the charter of the City Bank of Sherman. According to the uncontroverted evidence before me, its capital stock of \$500,000 was fully paid in. Regular annual meetings of its stockholders were held, at which directors were elected, and the directors in turn elected from their number the officers of the corporation. By-laws were adopted, and the minutes of the stockholders and directors' meetings were kept. A corporate seal was kept, and, where appropriate, corporate acts were attested therewith. No other conclusion can be reached from the testimony in the record before me than that there was a genuine

and bona fide effort to legally establish the Western Bank & Trust Company as a banking corporation, with a paid-in capital of \$500,000, and that there existed a genuine and bona fide belief on the part of those who promoted the concern that they had in fact accomplished this result. In other words, there existed no fraudulent intent on the part of those promoting the concern, in its establishment in the banking business in Dallas, as a corporation. They were seeking to establish a legitimate corporation and thought they had done so.

From the time the concern opened its doors it made prominent in every phase of its business that it was a banking corporation, organized under special act of the legislature of Texas. In all places and at all times it held itself out as and represented that it was such a corporation. It is admitted by petitioning creditors in the broadest terms that notice of such holding out was brought home to them in their dealings with it. Depositors placed their accumulated earnings and savings with it on the theory that it was a banking corporation. Those who entered into contracts with it contracted with it as a corporation, and they did not suppose they were contracting with the individuals who comprised its stockholders. The responsibility of the corporation was accepted and relied upon, and not the individual responsibility of its membership. Under this state of facts I do not consider there is the least doubt as to what the decided weight of authority declares the law to be.

Clark and Marshall, in their treatise on Private Corporations (volume 1, p. 182), say:

"By weight of authority, if an association assumes to act as a corporation, even without any authority at all from the legislature, a person who recognizes its existence as a corporation by contracting or otherwise dealing with it as such is estopped to deny it is a corporation in an action based upon such contract or dealing, whether the action is brought by the association as a corporation against him, or by him against the association to charge them as partners. In such cases the estoppel renders it unnecessary, according to the weight of authority, to prove either a *de jure* or a *de facto* corporate existence. It is only necessary to prove that the association was acting as a corporation, and that it dealt or was dealt with as such."

Among the list of authorities cited by the authors in support of these propositions is the case of *Gartside Coal Company v. Maxwell* (C. C.), 22 Fed., 197. In the course of that opinion, delivered by Judge Brewer, now of the Supreme Court, the following language is used:

"So, on the other hand, where a person deals with what he supposes is a corporation, with what all parties think is a corporation, where he gives his credit to that supposed corporation, he can not afterward, when it turns out that it is not validly incorporated, turn round and say: 'Well, I dealt with this supposed corporation. I thought it was a corporation. I trusted it as a corporation. I sold goods to it as a corporation. But it seems when it first attempted to become incorporated that there was some defect or irregularity in its proceedings, so that it did not become legally incorporated, and therefore you who are stockholders will be held personally liable.' I don't think it can be done."

Even though the Western Bank & Trust Com-

pany were not a *de facto* corporation, I am of the opinion petitioning creditors could not now be permitted to say: "It is not a corporation, and therefore, you who are stockholders must assume a personal liability to us."

I have stated there existed no fraudulent intent in the establishment of the concern as a corporation in the banking business at Dallas. When I say this, I do not wish to be understood as speaking of the subsequent conduct of its business. The management of the affairs of the bank may have been characterized by a hurtful disregard of sound and honest banking principles. Hopeless and disastrous insolvency may have followed in the wake of such management as its inevitable consequence. But this proceeding is not brought to fix a personal liability upon any person guilty of mismanagement of the affairs of the bank. As has been made plain, such mismanagement is not the basis of the proceeding. It is sought here to fix upon every holder of shares of the concern's stock the liability of a partner, a liability to the creditors of the concern for the whole amount of every debt due therefrom, without reference to his interest, as that interest may be represented by the number of shares owned. The record discloses: That among its stockholders are many persons living in various parts of the United States who purchased their shares of stock after the organization had been effected; that they paid par or more than par therefor as an investment in a banking corporation; that they believed a legal corporation existed; that otherwise they would not have made the investment; that they received such dividends as the board of directors declared; that a large majority of them knew absolutely nothing of the conduct of the business of the concern; and that, if wrong was done, they were entirely and absolutely innocent of knowledge thereof.

In the case of *Fay v. Noble*, 7 Cush. (Mass.), 192, the court says:

"We are not aware of any authority, certainly none was cited at the argument, to warrant the instruction that, in consequence of an omission to comply with the requisitions of law in the organization of a corporation, by which its proceedings were rendered void, persons who had subscribed for and taken stock in the company thereby became partners. The doctrine seems to us to be quite novel and somewhat startling. Surely it can not be, in the absence of all fraudulent intent (and none was proved or alleged in this case), that such a legal result follows as to fasten on parties involuntarily for such a cause the enlarged liability of copartners, a liability neither contemplated nor assented to by them. The very statement of the proposition carries with it a sufficient refutation. No such rule can follow, unless a principle of law be established, founded on no authority, and required by no public exigency. Corporations are known and recognized as legal entities, with rights and powers clearly defined and well understood, and wholly distinct and different from those of individuals and copartnerships. Persons who subscribe for and take stock in them are subject to certain fixed and limited liabilities, which they voluntarily assume, and these liabilities are not to be extended and enlarged so as to affect innocent parties beyond the letter of the law. A copartnership can not take upon itself the functions of a corporation, nor can a corporation or its members be made subject to

the liabilities of a copartnership, in the absence of all statutory provisions imposing such liabilities. The personal liability of the members of a joint stock company or copartnership is inconsistent with the character and nature of a corporation, of which the law properly recognizes only the creature of the charter, and knows not the individuals." *Ang. & Ames on Corp.*, 536, 537.

In the case of *American Salt Company v. Heid-enheimer*, 80 Tex., 344, 15 S. W., 1038, 26 Am. St. Rep., 743, wherein it was sought to hold stockholders in a faultily organized corporation liable as partners, Associate Justice Gaines, speaking for the court, says:

"Whether that rule ought to be applied in a case in which the corporators have knowingly and intentionally violated the law in procuring a charter under a general law we need not decide, but we are clearly of the opinion that it is not a proper rule to be applied in a case like the present, in which it appears that stockholders who are sought to be held liable as partners bought their stock after the organization had been effected and under the belief that a legal corporation existed. That under such circumstances the stockholders of the alleged corporation can not be held liable as partners is substantially held in the following cases: *Bank v. Stone*, 38 Mich., 779, *Fay v. Noble*, 7 Cush. (Mass.), 188; *Bank v. Padgett*, 69 Ga., 164; *Humphreys v. Morney*, 5 Colo., 282; *Central Bank v. Walker*, 66 N. Y., 424; *Coal Co. v. Maxwell*, 22 Fed., 197; *Methodist Church v. Pickett*, 19 N. Y., 482."

In my judgment it would be harsh and unjust to declare stockholders who became such after the concern was organized, who had nothing whatever to do with the management of its affairs, who were absolutely innocent of any wrongdoing in relation thereto, to be partners in the concern and to decree them personally liable for all its obligations, and this simply because they were stockholders and had accepted the dividends declared on their stock. The immediate and inevitable consequence of such a holding here would be to inflict ruin upon those who have not deserved it. The creditors of the concern bid fair to suffer loss, but a court of justice should not right their wrong by the commission of another wrong still more grievous.

After careful consideration, I have reached the conclusion that the petitioning creditors must fail in their contentions on two grounds: First, the *Western Bank & Trust Company* is a de facto corporation; and second, even were this not so, the petitioning creditors by their course of dealing with it as such are now estopped to deny that it is a corporation.

The prayer of the petitioning creditors and of the intervening petitioners will be denied, and their petitions dismissed, at their cost.

**Limitations.**—The Statute of Limitations is held, in *Aachen & M. F. Ins. Co. v. Morton* (C. C. A.), 156 Fed., 654, 15 L. R. A. (N. S.), 156, to begin to run against liability for wrongfully assigning a policy of insurance which was attempted to be canceled by a separate paper, under the claim that it was lost, in which assured undertook to surrender the policy, if found, at the time of the assignment, and not at the time judgment is recovered thereon by the assignee against the insurer.

#### Title Insurance; Indemnity.

In *Wheeler v. Equitable Trust Co.*, in the Supreme Court of Pennsylvania (March, 1908, 70 Atl., 750), it appeared that a policy of title insurance insured the mortgagee against defects or unmarketability of the title to the estate, mortgage, or interest in the real estate included in the mortgage. The policy contained in a note to a schedule a guaranty to complete certain buildings according to certain plans and specifications. The insured held the mortgage as collateral for a loan, and thereafter bought it in at his own sale, as authorized by the terms of the loan, at a price equal thereto, and thereafter had the mortgage foreclosed and bought the real estate. It was held that the policy should be construed, as a whole, as a contract of indemnity, and insured, having bought the mortgage at a price equal to the loan, suffered no loss, and therefore was not entitled to show, in an action on the policy, that there was a defect in the title, or that the houses had not been completed.

It was further held that it was immaterial under such circumstances that the insured, and not a stranger, bid the mortgage up, and bid it in at an amount equal to the loan, and that the only other bidder was the insolvent borrower. The court said in part:

"It is claimed, however, that the liability of the defendant company on the policy is changed or is different by reason of the fact that the plaintiff, and not a stranger, was the purchaser of the mortgage at the sale, and therefore that she may show that the mortgaged property was not equal to the amount of the note or claimed secured by the mortgage. Hence it is contended that the mortgage was less valuable than it would have been had the buildings been completed according to the plans and specifications filed with the defendant. But how can the fact that the plaintiff, and not a stranger, was the purchaser of the mortgage affect the question of the defendant's liability? It could not be contended that, if a third party had purchased the mortgage and paid \$53,000 in cash to the plaintiff, there could be any liability on the title policy. That sum, as we have seen, wiped out the entire indebtedness of Pharaoh to the plaintiff, and hence satisfied the mortgage given as collateral to secure its payment. That the plaintiff became the purchaser of the mortgage can in no way, as it seems to us present the matter differently from what it would be if a third party had been the purchaser. She sold the mortgage at auction by authority contained in the note securing the loan. She had control of the sale, and she was expressly empowered to become a purchaser of the mortgage at the sale. There was only one condition imposed upon her in becoming a purchaser, and that, as stipulated in the note, was that she 'be the highest bidder therefor.' The amount of her bid was, of course, wholly discretionary with her. She was not compelled to bid at all, nor was she required by the terms of her contract or under the law to bid any sum for the mortgage in order to protect her loan. All she was required to do under the power contained in the note authorizing a sale of the mortgage was to make the sale according to the terms of the authority conferred upon her. Had she complied with those terms and made a bona fide sale of the mortgage, and a loss had resulted, she could have had recourse to the title policy to indemnify her—

self. Her bid on the mortgage was simply a matter of her own pleasure and not required for the protection of her loan. She must therefore be regarded the same as any other bidder at the sale, and the amount of her bid must, as if made by a third party, be applied on the mortgage, which fully satisfies it and the loan secured by it.

"We are unable to see that the insolvency of Pharaoh, the other bidder at the sale of the mortgage, affects this case. We can not go into the question and ascertain whether Pharaoh was bidding for himself or another party who was able to pay the purchase price. It may well be that he had made the necessary arrangements to protect his property by securing another party to purchase the mortgage. In fact, it appears that he tried to secure delay in the sale of the mortgage for that very purpose. Be these facts as they may, the authority to sell and the control of the sale were entirely with the plaintiff. Unless she so desired, no sale could have taken place, and certainly no sale could have been consummated without a bona fide purchaser who could and did pay the purchase price. Under these facts it must be assumed that the plaintiff made her bid for the mortgage believing it to be worth the price she bid. She, therefore, as purchaser of the mortgage, occupies the position of a stranger, and must account for the \$53,000 and apply it to the mortgage. This is conceded to be the full value of the mortgage, and, the plaintiff having received that sum, she has sustained no loss which imposes a liability on the defendant company by reason of the issuance of its title policy to her."

**Validity Under the Statute of Frauds of Sale of Goods Already in Possession of Vendee.**

[New York Law Journal.]

The recent decision of the Supreme Court of Michigan in *Godkin v. Weber* (September, 1908, 117 N. W., 628) is an important and significant utterance on the question of delivery and acceptance of goods sold sufficient to satisfy the Statute of Frauds, especially in view of the fact that on this rehearing the court takes a different view from that of its former opinion in the same case (114 N. W., 924). The facts are stated as follows in the report of the later decision:

"On the 16th of February, 1905, there were in defendant's possession mill culls belonging to plaintiff amounting to 22,957 feet. Defendant made a verbal offer to plaintiff's agent to purchase these at \$9.50 per M. This offer was communicated to plaintiff February 17. On that day plaintiff wrote defendant accepting the offer. Very soon thereafter defendant informed plaintiff's agent that he would not purchase at that figure, and later, on the 22d of February, he wrote plaintiff offering to purchase at \$9 per M. This last offer never was accepted. Did this evidence justify an inference of sale?" This question is answered in the negative; the following is from the present opinion:

"It is urged that the section of the Michigan Statute of Frauds providing that no contract for the sale of goods for the price of \$50 or more shall be valid without a memorandum in writing signed by the party to be charged, or partial delivery, or partial payment, was complied with because the goods were already in defendant's possession. We assented to this view on the former hearing. In doing this I think we failed

to note—at least I failed to note—that the statute required acceptance as well as delivery. There is in this case no evidence of acceptance. And to hold that the statute was complied with is to disregard that portion of the statute requiring acceptance. In *Duplex Safety Boiler Co. v. McGinness* (64 How. Prac., N. Y., 99), it is said (this is quoted from the headnote, but it is correct): 'In order to constitute a delivery and acceptance of goods something more than words are necessary, and the fact that goods are already in the defendant's possession under a prior understanding does not amount to a delivery or acceptance. There must be some affirmative act of his to take the case out of the statute.' This is supported by a long line of cases (see *Dorsey v. Pike*, 50 Hun, 534, 3 N. Y. Supp., 730; *Follett Wood Co. v. Utica Trust & Deposit Co.*, 84 App. Div., 151, 82 N. Y. Supp., 597; *Hinchman v. Lincoln*, 124 U. S., 38, 8 Sup. Ct., 369, 31 L. Ed., 337; *Silkman Lumber Co. v. Hunholz*, 132 Wis., 610, 112 N. W., 1081, 11 L. R. A., N. S., 1186; *Lillywhite v. Devereux*, 15 M. & W., 285; *Proctor v. Jones*, 2 C. & P., 532; *Taylor v. Wakefield*, 6 El. & Bl., 765)."

Three members of the court dissent from the present decision, following what seems at first blush the common sense view that "where one having goods in his possession belonging to another makes a parol offer to buy and that parol offer is accepted, the law does not require the vendee to accept the acceptance of his offer to Purchase in order to complete the sale." It would seem, however, that the majority of the Michigan court in its later utterance follows the weight of authority and the better reason. As will be seen, several New York cases are cited holding that the mere fact that an alleged vendee continues in possession is not enough to take the transaction out of the operation of the statute.

The reasoning in *Silkman Lumber Co. v. Hunholz* (supra) in the Supreme Court of Wisconsin supports the determination of the Supreme Court of Michigan, although the facts of the Wisconsin case did not very strongly present the issue, the possession of the vendee at the time of the alleged sale not being at all clear. In the report of that case in 11 *Lawyer's Reports Annotated*, New Series, 1186, there is a valuable note collating the cases. From such note it appears that some courts have taken the superficial view that if the alleged vendee is already in possession the Statute of Frauds must be satisfied simultaneously with the making of the oral agreement. The better rule is, however, well stated in section 389 of *Mechem on Sales* as follows:

"Where the goods, at the time of the contract of sale, are already in the possession of the purchaser by virtue of some other arrangement, the nature of the delivery and receipt which will satisfy the statute is necessarily different. It is not necessary that the parties should go through the idle ceremony of returning the property to the seller that he may make a new delivery to the buyer, who is then to receive it anew. It is sufficient that the attitude of the party in possession shall be changed from that of a mere bailee to that of a purchaser in pursuance of the contract of sale, and this change of attitude can be shown by proof of such acts and conduct as indicate it. 'If it appears,' said the court in the leading case upon the subject, 'that the conduct of a defendant in dealing with goods already in his possession is wholly

inconsistent with the supposition that his former possession continues unchanged, he may properly be said to have accepted and actually received such goods under a contract, so as to take the case out of the operation of the statute of frauds; as, for instance, if he sells or attempts to sell goods, or if he disposes absolutely of the whole or any part of them, or attempts to do so, or alter the nature of the property or the like."

"Whether the acts show a receipt of this nature is ordinarily a question of fact for the jury, though where the facts are not in dispute the court may determine it."

The following extract from the opinion of the Third Appellate Division of the New York Supreme Court in *Follett Wool Co. v. Utica Trust & D. Co.* (84 A. D., 151), is also worthy of attention:

"It will serve no good purpose to attempt to review the numerous authorities where this question has been discussed. It has arisen most frequently in action by the seller against the purchaser, who, after making an oral agreement for the purchase of goods in his possession, has refused to carry out the agreement on the ground that there had been no change of possession and that he had not accepted and received the goods. This, in the absence of proof of some act on his part subsequent to the agreement showing an acceptance of the goods, has uniformly been held to be a good defense. It would be a rule out of harmony with the purpose of the statute to hold that when the situation of the parties is reversed and it is sought to charge the seller under such agreement it is unnecessary to prove any affirmative act on his part showing that the delivery and acceptance of the goods were by his assent. I think the necessity of showing the affirmative act exists in the one case the same as in the other to take the case out of the operation of the statute, and that the rule to be gathered from the authorities is that such act must be one by the party sought to be charged, whether he be vendor or vendee. If this is not so, the Statute of Frauds, which was intended to prevent fraud and perjury, furnishes no protection whatever to an owner of goods against the fraud and perjury of his bailee. Reference may be had to the following authorities, which sustain the conclusion reached: *Shindler v. Houston*, 1 N. Y., 261; *Brabin v. Hyde*, 32 id., 519; *Pitney v. Glens Falls Ins. Co.*, 65 id., 6; *Matter of Hoover*, 33 Hun, 553; *Brown Stat. Frauds*, 5th ed., sec. 316; *Benj. Sales*, 7th Am. ed., 174."

In the opinion in *Silkman Lumber Co. v. Hunholz* (supra), as in *Follett Wool Co. v. Utica Trust & D. Co.* (supra) and many other cases, it is stated that the requirement of some overt act, such as a sale of the goods to a third party, is necessary if a parol sale is to be found between the original parties in order to effectuate the real object of the Statute of Frauds. This view seems correct. While in the majority of sales the property will not be in the possession of the alleged vendee, there is no good reason why the benefits of the statute should be denied to parties in that situation. Indeed, there may be especial ground for insisting on the statutory protection. A person whose possession concededly began as a mere bailee might be particularly subject to oppression and fraud if his bailor were permitted to establish on purely oral testimony a fictitious sale at an extravagant price.

**Master and Servant.**—The liability of a master for the killing of a servant struck by a bucket allowed to fall down a mine shaft because of the inexperience of a servant temporarily in charge of the hoisting mechanism is sustained in *Lewis v. Mammoth Min. Co.* (Utah), 93 Pac., 732, 15 L. R. A. (N. S.), 439, although this servant is permitted by the competent engineer to exchange places with him in violation of the master's instructions, where, under a statute, they are not fellow-servants with the deceased.

A minor, who by misrepresenting his age, obtains a student fireman's permit from a railroad company, is held, in *Norfolk & W. R. Co. v. Bondurant* (107 Va., 515), 59 S. E., 1091, 15 L. R. A. (N. S.), 443, to be entitled only to the degree of care requisite in case of trespassers or, at most, of bare licensees, although his infancy in no way contributes to his injury.

A private railroad operated by a company not incorporated for railroad purposes, is held, in *Ed. H. Cunningham & Co. v. Neal* (Tex.), 107 S. W., 539, 15 L. R. A. (N. S.), 479, to be within the terms of a fellow-servant act relating to "railroads."

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in *THE WASHINGTON LAW REPORTER*, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William H. Bohannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. CHARLES W. BOHANNON, 707 13th St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,555. Administration. [Seal.] 45-St

John B. Lerner, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. Hannay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1908. THE WASHINGTON LOAN AND TRUST CO., by Fred'k Eichelberger. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,572. Administration. [Seal.] 45-St

**Legal Notices.****Maddox & Gatley, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**John P. Hirth, Complainant, v. Henrietta C. Hirth et al., Defendants. No. 28,010, Equity.**

Upon consideration of the petition of H. Prescott Gatley, trustee, herein this day filed, it is, this 5th day of November, 1908, by the court, adjudged and ordered that said trustee be, and he is hereby, authorized to sell to William A. Volland lot No. 14 in block No. 15 of Mt. Pleasant and Pleasant Plains, as per plat recorded in Book County No. 13, at page 70, of the office of the surveyor of said District, subject to a covenant to dedicate a strip of land 7½ feet from the rear of said lot, whenever the adjoining owners and the Commissioners of said District agree upon a general plan for alleys in said block, at and for the sum of fifty-three hundred and fifty (\$5350) dollars in cash, subject to a broker's commission of three per cent; the examination of title and conveying to be at the purchaser's cost, and rents, insurance, taxes, and water rents to be adjusted to the date of transfer. And that said sale so made shall be finally ratified and confirmed, unless cause to the contrary be shown on or before the 5th day of December, 1908. Provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before said last-mentioned date. By

[Seal] the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-8t

**I. J. Costigan, Solicitor**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term as an Equity Court.**  
**Patrick J. Brennan, Marian G. Brennan, His Wife, Margaret B. Hauze, Complainants, v. Agnes B. Brennan O'Brien, Mary Brennan McDermott, Martin J. Brennan, and his Unknown Heirs, Allenees, Devisees, and Assigns, Defendants.**  
**Equity No. 28,128.**

The object of this suit is the partition by sale and division of proceeds among those entitled thereto of lot fifteen (15), square eight hundred twenty-nine (829), in the city of Washington, District of Columbia, together with the improvements, rights, privileges, and appurtenances thereto belonging. On motion of the complainants it is this 5th day of November, 1908, ordered that the defendants, Mary Brennan McDermott, Martin J. Brennan, and his unknown heirs, allenees, devisees, and assigns, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

[Seal] The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-8t

**Wilton J. Lambert and Brandenburg & Brandenburg, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Millard F. Dunn et al. v. Helen Dunn et al.**  
**Equity No. 26,686.**

On consideration of the report of Wilton J. Lambert and F. Walter Brandenburg, trustees, filed herein upon the 30th day of October, 1908, submitting the offer of Emily Kretchmar for the purchase of the property involved in this proceeding, the same being lot numbered ten (10) in block numbered sixteen (16), as per plat recorded in county book numbered six (6), at pages 108 and 104, of the surveyor's office of the District of Columbia, together with the improvements thereon, for the sum of eighteen hundred and fifty dollars (\$1850), less a commission of three per cent (3%) to the real estate agent effecting said sale, payments to be made—five hundred dollars (\$500) in cash and the balance payable on or before one year, secured by a first trust upon the property sold, it is, this 30th day of October, 1908, ordered that said offer be accepted and said sale be made and confirmed by the court unless cause to the contrary be shown on or before the 30th day of November, 1908. Provided this order be published once a week for three successive weeks before said last mentioned

[Seal] day in The Washington Law Reporter. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 45-8t

Justice blanks of every description for sale at this office.

**Legal Notices.****Darr, Peyser & Curtin, Attorneys**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Fogarty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. CHAS. W. DARR, 705 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,873. Administration. [Seal.] 45-8t

**Edward S. McCalmont, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Frances H. Bryan, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of November, 1908. BENJAMIN C. BRYAN, by Edward S. McCalmont, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,842. Admn. [Seal.] 45-8t

**Edward H. Thomas and Andrew B. Duvall, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**

**In Re Opening of an Alley in Square 3530 and 3526**  
**In the District of Columbia.**  
**District Court, No. 789.**

It appearing that an order of the court passed herein on the 15th day of October, A. D. 1903, incorrectly designated square thirty-five hundred and thirty as square thirty six hundred and thirty, it is, this 4th day of November, A. D. 1908, decreed, that the said order and notice be amended to read as follows: Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1608 et seq. of the Code of Laws for the District of Columbia have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square thirty-five hundred and thirty (3580) and thirty-five hundred and twenty-six (3526) in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of said alley and the condemnation of the land necessary for the purpose thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid code of laws. It is, by the court, this 4th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 23d day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Times and The Washington Post, newspapers published in the said District, before the said 23d day of November, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, before the said 23d day of November, A. D. 1908. By the

[Seal] Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-1t



**Legal Notices.**

**Stuart McNamara, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Thomas Broderick, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1908. WM. T. FINN: Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,739. Administration. [Seal.] 45-31

**J. M. Chamberlain and Oscar Luckett, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Bladen Forrest, Complainant v. James K. Forrest et al., Defendants. Equity No. 26,448.**

Upon consideration of the report of the trustees, filed this day, it is by the court, this 30th day of October, 1908, ordered that the trustees be, and they are hereby, authorized to accept the offer of Clarence F. Donohoe for the purchase of No. 1757 Pennsylvania avenue, N. W., being the west 10.92 feet front by the full depth thereof of lot 8, and the east 14 feet front by the full depth thereof of lot 9, in square 106, containing about 1,746 square feet improved by brick dwelling and stable, in this city and District, for the sum of \$9,000 in cash, less a broker's commission of 8 per cent, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the purchaser, or his assigns. Provided that a copy of this order be published once a week for three weeks

[Seal] in The Washington Law Reporter and The Washington Post before said final ratification.  
**JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 45-31**

**SECOND INSERTION.**

**Gordon & Gordon, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Helen Young Shepperd, Deceased.**  
 No. 15,149. Administration Docket 88.  
 Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Randolph Clay Murphy and Florence Sarah Hoyt, it is ordered, this 29th day of October, A. D. 1908, that William Patrick, Chester Patrick, and John Young Patrick, and the unknown heirs at law and next of kin of Helen Young Shepperd, and all others concerned, appear in said court on Monday, the 30th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.  
 [Seal] **WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 44-31**

**Wm. E. Edmonston, Attorney.**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth D. Palmer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. WILLIAM L. ROBINS, 1700 13th St. N. W.; WILLIAM B. PALMER, 606 9th St. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,576. Administration. [Seal.] 44-31

**Legal Notices.**

**Alex. H. Bell, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anthony Felder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of October, 1908. ANNA FELDER, 102 1st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,490. Administration. [Seal.] 44-31

**Jos. A. Burkart, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Marie F. Seltz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1908. JOS. A. BURKART, Corcoran Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,531. Administration. [Seal.] 44-31

**Millan & Smith, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William C. Eldridge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1908. MARY B. ELDRIDGE, 1356 Kenyon St. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,574. Administration. [Seal.] 44-31

**Carlisle & Johnson, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Millard F. Lynch v. James B. Smallwood et al. No. 23,028. In Equity.**

The object of this suit is to have the title of the complainant to lot numbered six (6), in square numbered seven hundred and twenty-eight (728), in the city of Washington, District of Columbia, perfected by having his title by adverse possession decreed by the court. On motion of the complainant, it is, this 27th day of October, A. D. 1908, ordered that the defendants, James B. Smallwood and Mary H. F. Dobbins, do cause their several appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. It is further ordered that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and [Seal] in The Washington Herald. **JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 44-31**

**Wm. D. Hoover, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cuthbert W. Ridley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 28th day of October, 1908. NATIONAL SAVINGS AND TRUST CO., by George Howard, Treasurer; J. LOUIS LOOSE, 1349 R St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,566. Administration. [Seal.] 44-31

**Legal Notices.**

Henry W. Sohon, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary A. Rodriguez, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. PHILOMENA R. JOYCE, FRANCES C. JOYCE, 1840 Vermont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,577. Administration. [Seal.] 43-St

**THIRD INSERTION.**

W. Blair and G. Blair, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Virginia L. W. Fox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 19th day of October, 1908. ELLEN C. DE Q. WOODBURY; WOODBURY BLAIR, (Corcoran Bldg.); GIST BLAIR; MONTGOMERY BLAIR. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,402. Administration. [Seal.] 43-St

John B. Larner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Julia E. McChesney, Deceased.  
No. 15,527. Administration Docket 39.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by the Washington Loan and Trust Company, the executor named therein, it is ordered this 19th day of October, A. D., 1908, that William P. Dolan, (2) James W. Dolan, (3) Belle Fretwell, (4) Thomas M. Dolan, (5) Edwin Dolan, (6) Preston Dolan, (7) James A. Dolan, (8) Mabel Dolan, (9) W. K. Jones, (10) George S. Jones, (11) Mrs. M. J. Flynn, (12) Mrs. Nina Elson, (13) Helen Jones, and (14) Lula Jones, and all others concerned, appear in said court on Monday, the 23d day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 43-St

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Caroline Miller, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. NATIONAL SAVINGS AND TRUST COMPANY, by C. E. Nyman, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,387. Administration. [Seal.] 43-St

**Legal Notices.**

**Notice of Petition for Change of Name by the Equitable Industrial Life Insurance Company.**

Notice is hereby given that the Equitable Industrial Life Insurance Company, duly incorporated under the laws in force in the District of Columbia, has filed its petition in the Supreme Court of the District of Columbia, being No. 28,102 in Equity, praying the court to change its name to the "Equitable Life Insurance Company," assigning as reasons therefor that as it has recently also engaged in the business of general life insurance, in conducting which its experience has been that the word "Industrial" in its corporate name is misleading, detrimental and an obstacle to its getting business. EQUITABLE INDUSTRIAL LIFE INSURANCE COMPANY, by John S. Swormstedt, President; Allen C. Clark, Secretary. 43-St

Frank S. Bright, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Thomas McGrain, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of October, 1908. JOHN J. McGRAIN, 122 V st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,556. Administration. [Seal.] 43-St

Sheehy & Sheehy, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Margaret Walsh, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of October, 1908. BERNARD LEONARD, 532 4 1/2 st. S. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,545. Administration [Seal.] 43-St

George H. Calvert, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Susanna M. Bond, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 10th day of September, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of October, 1908. BENJAMIN F. SMITH, by Geo. H. Calvert, Jr., Attorney, 452 D st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,481. Administration. [Seal.] 43-St

**FOURTH INSERTION.**

P. M. Brown and C. W. Claggett, Solicitors  
In the Supreme Court of the District of Columbia.  
James H. Taylor, Executor and Trustee, et al. v. Lucy A. Cunningham et al. Eq. No. 27,934.

The object of this suit is to reform two deeds recorded in liber No. 601, at folio 142, et seq. and in liber 991, at folio 13, et seq., respectively, of the land records of the District of Columbia, so that the same may be made to pass an estate in fee simple to James H. Taylor, as executor and trustee under the will of Susan Poulton, deceased, to the property described in said deeds namely, all that land and real estate situate in the city of Washington and District of Columbia, being described as follows, part of lot A in George C. Hercules' subdivision in square three hundred and eighty-five (385) as per plat recorded in book W. F., page 140, surveyor's office, D. C., described as follows: Beginning for the same at the southeast corner of said lot, and running thence southwestwardly along the north line of Maryland avenue, thirty-two and seventy-five hundredths (32.75) feet; thence northwestwardly at right

## Legal Notices.

angles to said avenue sixty-nine and fifty hundredths (69.50) feet; thence north eight and forty-six hundredths (8.46) feet; thence northeastwardly thirty and fifty hundredths (30.50) feet, to a point in the east line of said lot seventy-two and fifty-nine hundredths (72.59) feet northwestwardly from the point of beginning, and thence southeastwardly along said east line of said lot seventy-two and fifty-nine hundredths (72.59) feet to said avenue and the point of beginning. On motion of the complainant it is this 15th day of October, A. D. 1908, ordered, that the defendant, George W. Nichols, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 42-41

W. A. Johnston, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of William M. Starr, Deceased. Probate  
No. 15,102.

The notification as to the trial of the issues in the above entitled cause relating to the validity of the paper writing dated the 12th day of February, A. D. 1908, purporting to be the last will and testament of William M. Starr, deceased, having been returned non est as to Levi Morningstar, Hie Morningstar, Lavinia Bottruff, Louisa Moore, Lizzie Porter, Olla Bowler, Nancy Coleman, William Christie, Charles Morningstar, Rena Morningstar, Fritz Morningstar, Frank Morningstar, Cora Cain, Hannah Long, Eliza Meek, Susan Robins, Elliott Christie, Hannah Morningstar, Logan Morningstar and Ogden Morningstar, heirs at law and next of kin of William M. Starr, deceased, "not to be found," it is this 12th day of October, A. D. 1908, ordered that the issues be set down for trial on the 25th day of November, 1908, and a copy of the said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for four weeks in The Evening Star, of Washington, D. C. The substance of said issues is whether said paper writing was procured by fraud or undue influence, and whether said testator was of unsound mind on the 12th day of February, 1908, or if he executed said will whether he afterwards revoked it. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 42-41

Henry H. Glasie, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Louise A. B. Hughes, Deceased.  
No. 14,168. Administration Docket 86.

The notification as to the trial of the issues in this cause relating to the validity of the paper writings, dated the 24th day of March, 1899, and the 28th day of June, 1900, purporting to be the last will and testament and codicil of Louise A. B. Hughes, deceased, having been returned as to Dr. Arthur De Roaldes, Gladys Connelly, Augustus S. Hutchins, Waldo Hutchins, Pattie Weeks, Harry B. Dick, Charity L. Bowman, William Weeks Hall, minor; Rev. Edward J. Byrnes, Mrs. Kittie White, Dr. Homer J. Dupuy, James M. Dupuy, Mrs. Anna De Roaldes, James R. Randall, Countess Anita Maggolini, Carlo Maggolini, Margherita Maggolini, Woodlawn Cemetery of N. Y. City, Sisters of Bon Secours, Dr. John A. Irwin, Fannie Hewes, Martha Hoge, Charles Hiern, Clara C. Mitchell, Marlon G. Wilson, Annie C. Grief, Sumter Calvert, Maria S. Hewes, Elizabeth K. Hewes Carson, Cora S. Hewes, Emma L. Hewes Brown, Newton H. Hewes, Frederick S. Hewes, Jr., William H. W. Hewes, Francis G. Hewes, Henry L. Hewes, and Finlay B. Hewes, and the unknown heirs at law and next of kin of Louise A. B. Hughes, deceased, "not to be found," it is this 12th day of October, 1908, ordered that the issues be set down for trial on the 16th day of November, 1908, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writings were procured by fraud or undue influence, whether they were executed by said deceased, whether [Seal] they were revoked, whether said deceased was of sound mind, etc. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 42-41

## Legal Notices.

Brandenburg & Brandenburg, Solicitors

In the Supreme Court of the District of Columbia.  
The Edes Home, a Corporation, v. Basil Waters et al.  
No. 27,822, Eq.

The object of this suit is to quiet title and establish of record by adverse possession a good title in fee simple in the complainant to the north part of the lot of ground known as lot 221, in Beatty & Hawkins' addition to that part of the District of Columbia formerly known as Georgetown, and described as being the fifty-nine feet six inches on the west side of Market street and running back the full depth of said lot, more particularly described in the bill of complaint, and restrain and enjoin the defendants from selling up, claiming, or asserting any title thereto. On motion of the complainant, by its solicitors, Brandenburg & Brandenburg, it is this 23d day of September, A. D. 1908, ordered that the defendants, Basil Waters, Ignatius Waters, Zedock Waters, Mary A. Waters, Mary E. Waters, Lottie Waters, Hood Waters, Virginia Waters, Eliza Waters, William Waters, Susan Gibson and her husband, — Gibson; Agnes Gibson, Anna Dorsey and her husband, — Dorsey; Fannie Pennington and her husband, — Pennington; Agnes Gibson, James Gibson, Nanie Kimmel, Agnes Dorsey and her husband, Harry Dorsey; Sarah Dorsey, William A. Waters, Zechariah D. Waters, Washington Waters, Washington D. Waters, B. Worthington Waters, Thomas W. Waters, Ignatius Waters, T. Sollers Waters, Fannie W. Lerner, if they be living, or, if any or all of them be dead, then the unknown heirs, alienees, or devisees of any or all of them, cause their appearance to be entered herein on or before the first ruleday occurring three months after the date of the expiration of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three consecutive months in The Washington Law Reporter and The Evening Star before said date. By the [Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept. 25; oct. 2, 30; nov. 6, 27; dec. 4.

## SIXTH INSERTION.

J. J. Darlington and W. C. Sullivan, Solicitors

In the Supreme Court of the District of Columbia.  
Julia Ten Eyck McBlair et al. v. George F. Green et al.  
No. 27,887. Equity Doc. —.

The object of this suit is to declare complainants' title perfect, by adverse possession, to original lots numbered eight (8) and eleven (11) in square numbered seventy-eight (78), Washington, District of Columbia, as described in the bill. On motion of the complainants, it is, this 28th day of August, A. D. 1908, ordered that the defendants, Mary I. Lewis, Alice Q. Bruce, Rousby Quislinbury, Belle P. Quislinbury, Emma L. Quislinbury, Emma Rose Quislinbury, Eastmon P. Green, Easle C. Gandell, John W. Sykes, Mary Sykes Findley, Daniel P. Wirt, Augusta Wirt Nalle, Forrest Tayloe, and Louisa D. Tayloe, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and alienees of Charles Gilchrist, John Hewitt, Uriah Forrest, Rebecca Forrest, George Forrest, Benjamin S. Forrest, Ann Green, Maria Tayloe Bohrer, Maria G. Devereux, Rebecca Ann Green, or Ann Rebecca Green, Elizabeth R. Quislinbury, Alice G. de Yturbe, Osceola C. Green, Nicholas Quislinbury, John Tayloe, 3d, John Tayloe, 4th, Maria Tayloe Sykes, Catherine Tayloe Wirt, and of each of them, cause their appearance to be entered herein on or before the first rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, for the first month, and twice a month for the two succeeding months [Seal] in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 28; sept. 4, 11; oct. 2, 9; nov. 6, 13

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The amendment to the Common Law Rules 54, 55, 56, and 57 of the Supreme Court of this District, relating to bills of exceptions, will be found on page 736 of this issue.

### CASES DECIDED BY THE COURT OF APPEALS.

Attorneys; Practice Before Interior Department; Disbarment for Unprofessional Conduct; Mandamus.

In *Garfield v. United States ex rel. Stevens et al.*, the appeal was from a judgment of the court below directing a writ of mandamus to issue to compel the respondent, as Secretary of the Interior, to vacate an order disbarring the relators from practice before that Department and to restore them to that right. It appeared that charges of illegal and unprofessional conduct were preferred against relators, it being claimed among other things, that they had purchased land warrants from clients at less than their market value through failure to inform them as to their actual value and misleading them in regard thereto, and had resold them at a large profit. The answer of relators, while denying that they had been guilty of unprofessional conduct, admitted the purchase of warrants from clients in the cases named, and claimed that this had been the custom of many attorneys engaged in practice before the Interior Department and was well known to the officials thereof. After hearing, an order of disbarment was made.

Thereupon, relators petitioned for a writ of mandamus to compel their restoration to practice. The relators alleged, among other grounds for relief, that the proceeding was not in accord with due process of law in that certain ex parte depositions were considered by the Secretary of the Interior in arriving at his decision. This was denied by the respondent, who alleged in his answer to the rule that no evidence was considered by him except the substantial admission of the charges made by the relators. The trial court sustained a demurrer to the answer of respondent and granted the writ of mandamus, and the respondent appealed. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, reverses the judgment, holding that upon the facts admitted by the demurrer there was no denial of due process of law. Incidentally it was determined that the Secretary of the Interior was entitled to prosecute the appeal without giving a bond to operate as a supersedeas.

In the case of *Garfield v. United States ex rel. Gaddis*, it appeared that certain depositions had been taken without notice to the relator, and were used by the respondent in reaching his decision ordering relator's disbarment, but copies thereof had been given relator and were used by him in his argument before the Secretary. The order of the court below sustaining a demurrer to the answer of the respondent and granting the writ of mandamus is reversed, in an opinion by Mr. Chief Justice Shepard.

In the cases of *Garfield v. United States ex rel. Spalding*, the judgment of the court below sustaining a demurrer to the answer of respondent and granting a writ of mandamus is affirmed, in an opinion by Mr. Chief Justice Shepard. This case is distinguished from those above noted on the ground that the order of disbarment was founded on testimony taken without notice to relators and an opportunity for them to cross-examine the witnesses, and that relators had not assented to the use made of such testimony.

### Election of Remedies.

In *Heney v. Herrington*, decided by the Court of Appeals of New York, and reported in the *New York Law Journal*, the doctrine of the election of remedies is said to consist of holding the party to the remedy first taken when, by law or by contract, there was a choice between two remedies which proceeded upon opposite and inconsistent claims. A former action that was dismissed because based upon a theory of right in behalf of the plaintiff which did not exist, is not such an election of remedy as will bar a subsequent action, based upon a correct theory, involving the same subject-matter. It is held that a defense that the action is barred by the plaintiff having in a former action elected a different remedy should be pleaded.

## Court of Appeals of the District of Columbia

CHARLES H. MERILLAT ET AL., TRUSTEES,  
APPELLANTS,

v.

MELVILLE D. HENSEY ET AL.

ASSIGNMENT BY INSOLVENT DEBTOR; FRAUD; PRESUMPTIONS; EVIDENCE OF GOOD FAITH.

1. The taking by creditors from an insolvent debtor of an absolute assignment of a cause of action for which suit is then pending, under a secret arrangement to pay to the debtor any surplus remaining after satisfying the claim of the creditors, is presumptively fraudulent; but under sec. 1120, Code D. C., making intent to defraud a question of fact and not of law, such presumption is rebuttable.
2. Such an assignment will not be avoided when, from all the facts and circumstances surrounding the case, the acts of the parties are found to be consistent with an honest purpose, and other creditors were not in fact prejudiced.
3. A bill in equity to set aside, as having been made to hinder, delay, and defraud creditors, an assignment by an insolvent debtor of a cause of action arising upon a bond of indemnity, dismissed, notwithstanding a secret agreement between the assignor and assignees for payment to the former of any surplus recovered, where it appeared the assignees were bona fide creditors of the assignor, that the action had been pending for more than two years and but small progress had been made in its prosecution, that the assignor was without funds to prosecute it, that no steps were taken by other creditors of the assignor to reach the debtor's interest or to assist in its prosecution, and the amount actually recovered was not sufficient, after payment of costs and attorneys' fees, to liquidate the claims of the assignees.

No. 1878. Decided November 4, 1908.

APPEAL by complainants from a decree of the Supreme Court of the District of Columbia, in Equity, No. 26,989, dismissing a bill to set aside an assignment of a cause of action as having been made to defraud creditors. Affirmed.

Mr. C. H. MERILLAT and Mr. M. N. RICHARDSON for the appellants.

Mr. A. A. BIRNEY and Mr. H. F. WOODARD for the appellees.

Mr. Justice ROBB delivered the opinion of the Court:

This cause originated in a bill filed by appellants, as complainants below, against Melville D. Hensey, Mercantile Trust Company, Frederick A. Mertens and Park Agnew, appellees here, to avoid an assignment by Hensey to Mertens and Agnew on the ground that said assignment was made with intent to hinder, delay and defraud other creditors.

The bill alleged that complainants as trustees on May 21, 1906, obtained a judgment against said Hensey for more than \$87,000; that on June 12, 1905, said Hensey in a suit at law in which he was plaintiff obtained a judgment against said Mercantile Trust Company in the sum of \$8,468, with costs:

"That being the owner of said judgment against the said Mercantile Trust Company, corporation, the said defendant Melville D. Hensey, who then and long prior thereto had been indebted to your complainants and other persons, and who was also then insolvent, in fraud of the rights of your complainants and of his creditors, and for the purpose of hindering, delaying and defrauding them

and defeating the just claims of his creditors, and without consideration, in whole or in part, as your complainants are informed and believe, and so believing aver, assigned all his right, title and interest in said judgment as of record, to the defendants the said Frederick A. Mertens and the said Park Agnew, and said assignment of record was made on or about the 3rd day of March, 1903. Your complainants are informed and believe, and so believing aver, that if either said Mertens or Agnew, or both of them had any claim against the said Melville D. Hensey, the true and exact amount of the indebtedness justly due by said Melville D. Hensey to them or either of them, was and is far below the amount of said judgment, and that said entire judgment was conveyed or assigned by said Melville D. Hensey to them upon a secret agreement and arrangement that they shall refund or repay to him the amount thereof, in excess of the claim of them or either of them against him."

The bill required the defendants, Mertens and Agnew, to answer under oath and disclose the amount paid, if any, upon the assignment of said judgment to them, and the arrangement or agreement between them in respect of the repayment to said Hensey of the balance or amount over and above their claim, if any. Interrogatories were submitted to each defendant and all save Hensey were required to answer under oath.

Hensey in his answer admitted the judgment against the trust company; averred he had no interest in it; that on the 21st of October, 1903, he assigned it to Mertens and Agnew. He denied that the assignment was made to hinder, delay, or defraud creditors, and averred that it was made in good faith and to secure an indebtedness of \$7,300 to Mertens and Agnew and a loan by them of \$250.

The joint answer of Mertens and Agnew admitted the assignment by Hensey to them, denied fraud, and averred the amount due them, including costs and counsel fees, was in excess of the judgment assigned them. Their answer admitted that concurrently with the assignment an agreement was entered into between them and Hensey which provided that from the proceeds of any judgment that might be recovered costs and attorneys' fees should first be paid; secondly, their claim, and any balance to Hensey; that the amount of the judgment was not sufficient to pay costs, attorneys' fees, and their claim.

The facts, as developed by the proof, are these:

On July 23, 1901, Hensey, through Birney & Woodward as his attorneys, filed a suit in the Supreme Court of the District of Columbia against the Mercantile Trust Company on a bond given by said company to said Hensey for \$50,000. Hensey was then in failing circumstances as evidenced by the fact that between April 23, 1900, and June 11, 1901, four judgments for \$250.74, \$600, \$700, and \$400, respectively, were rendered against him, which at the time of the bringing of the suit against the trust company were outstanding and unpaid, and, so far as the record discloses, are still outstanding and unpaid. Other liabilities were also then outstanding.

Mertens testified that the firm of Mertens & Agnew in 1899 sold one Kellogg brick, the payment for which was guaranteed by Hensey; that it was then understood that cash would be paid, but that when Hensey was unable to pay cash the

firm accepted his notes, no account being kept of the transaction as a settlement would be made every week or two by the surrender to Hensey of brickyard delivery slips in exchange for his notes. These notes were renewed from time to time and were still outstanding and aggregated over \$7,300 when Hensey assigned his suit against the trust company.

Mertens further testified that at the time of the assignment of this suit against the trust company Hensey did not have anything and could not have stood the costs of suit. Mertens was asked to produce the books of the firm of Mertens and Agnew for the years 1899 and 1900, but declined to do so on the ground that they contained no account with Kellogg and Hensey.

Agnew testified that he was present when the assignment was made, and that there was discussion about Hensey's affairs. He was asked: "Did it concern his debts?" and answered: "I suppose that is about the only thing it concerned, but I could not swear to that." He further testified to having read a newspaper article published July 20, 1903, containing an account of the suit against Hensey which culminated in said judgment for \$67,000.

A precept was offered in evidence dated February 15, 1902, and directing the clerk of the Supreme Court of the District to enter the cause of Hensey v. Trust Company to the use of Mertens and Agnew. This was filed in the Supreme Court of the District on October 20, 1903. There was also put in evidence the assignment of said suit by Hensey to Mertens and Agnew as follows:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

At Law. No. 44822.

Melville D. Hensey, Plaintiff,  
v.

Mercantile Trust Company, Defendant.

For value received, I hereby sell, assign, transfer and set over to Frederick Mertens and Park Agnew my cause of action in the above entitled suit, and all the proceeds which may be derived from the prosecution thereof and from any judgment which may be obtained. I further authorize and empower the said assignees to continue the prosecution of said cause in my name, to which end I constitute them my lawful attorneys in fact. In witness whereof I have hereunto set my hand, this twenty-first day of October, 1903.

MELVILLE D. HENSEY."

Concurrently with this assignment the following agreement was entered into:

"This agreement entered into this twenty-first day of October, 1903, between Frederick Mertens and Park Agnew, parties of the first part, and Melville D. Hensey, party of the second part;

Whereas the party of the second part has this day executed an assignment of his cause of action against the Mercantile Trust Company, at Law, No. 44,822, in the Supreme Court of the District of Columbia;

Now, therefore, it is agreed and understood between the parties that from the proceeds of any judgment that may be recovered against the Mercantile Trust Company in said suit, or any other suit involving the same issues, that there shall first be paid cost and attorneys' fees; secondly,

the claim of Mertens and Agnew against Melville D. Hensey, and any balance then remaining over to the said Hensey.

Witness the signatures and seals of the parties, this twenty-first day of October, 1903.

FREDERICK MERTENS.

PARK AGNEW.

MELVILLE D. HENSEY."

The assignment was filed with the clerk of the Supreme Court of the District, but the agreement was retained by Birney & Woodward.

A verdict was obtained on February 1, 1904, in this suit against the Trust Company for \$18,250. This was set aside and a new trial had which resulted in a verdict and judgment in the sum of \$8,468. Immediately upon the affirmance of said judgment by the Supreme Court of the United States appellants filed their bill herein. The court below after final hearing on bill, answer, pleadings, and testimony, dismissed the cause with costs in favor of defendants. This appeal ensued.

We have examined the record with care, and are convinced that Hensey at the time he made the assignment in question was indebted to Mertens and Agnew as they contend. While their transactions with him and the methods of bookkeeping employed were a little unusual, we are not prepared in the absence of proof, to question their testimony. They appear to be reputable business men and aside from the careless manner in which they dealt with Hensey, there is no reason to question the bona fides of their claim against him.

A bona fide debt existing, Hensey has a perfect right to prefer Mertens and Agnew over other creditors, provided the preference was not given with intent to hinder, delay or defraud other creditors.

Unquestionably the taking of this absolute assignment by Mertens and Agnew from their insolvent debtor Hensey and entering into what must be considered as a secret arrangement to pay him any overplus, constitutes a badge of fraud. Under the Code (section 1120) intent to defraud is made a question of fact and not of law. We are, therefore, of the opinion that while the transaction on its face is presumptively fraudulent, yet, nevertheless, that presumption is rebuttable—that is, susceptible of explanation. If, then, from all the facts and circumstances surrounding the case we find the acts of the parties to be consistent with an honest purpose, and that other creditors were not in fact prejudiced, we are not required to avoid the assignment.

Mr. Justice Brown, in *Huntley v. Kingman* (152 U. S., 532), said: "The tendency of courts in modern times has been, not to hold instruments of this character to be fraudulent and void upon their face, unless they contain provisions plainly inconsistent with an honest purpose, or the instrument indicates with reasonable certainty that it was executed, not to secure bona fide creditors, but to enable the debtor to continue to carry on his business under cover of another's name."

In the instant case the favored creditors did not in fact obtain enough from the suit assigned them to liquidate their claim against the debtor. The claim was worth no more when it was assigned than when they recovered final judgment thereon. It was a suit on an indemnity bond, and although it had then been in court two years no progress appears to have been made in its prosecution.



The debtor had no funds to prosecute it, and no steps were taken by creditors, including appellants, to reach the debtor's interest therein; neither were any steps taken to assist in its prosecution. The appellees were not, therefore, taking an assignment of a chose in action of fixed and certain value, but were buying a law suit with the costs and expenses incident thereto. We think there can be no doubt that had they given Hensey no defeasance agreement, the transaction would have been a perfectly legitimate one. In other words, had they, in consideration of the extinguishment of their claim against Hensey, taken the assignment in question, other creditors could not have complained even though the assignees ultimately recovered more than their claim, for the obvious reason that the consideration for the assignment in the circumstances of the case would not have been so inadequate as to have avoided the transaction. That the actual value of the thing assigned was not greater than Hensey's indebtedness to the assignees is clear in the light of the fact that the judgment ultimately obtained was not sufficient to liquidate that indebtedness. In the circumstances of this case it seems to us inequitable and illogical to set aside this assignment because of the agreement as to overplus, when but for that agreement the transaction would not have been open to question. It must have appeared to Mertens and Agnew at the time the assignment was taken, as testified to by their counsel, Mr. Woodward, that it was extremely doubtful whether there would be any overplus. It must have appeared equally as doubtful to other creditors because no questions were asked either Mertens or Agnew concerning the transaction. Had any creditor solicited information on the subject and received an evasive and misleading reply, this case would be on an altogether different basis. That they did not do so indicates a willingness on their part to refrain from action until these diligent creditors had prosecuted the claim assigned them to a successful issue.

For two years prior to the assignment of this suit against the trust company there was nothing to prevent creditors from instituting bankruptcy proceedings against this debtor and prosecuting the suit for the benefit of all creditors. Their failure to do so has a distinct bearing, in our view, on the question as to what was the then understood value of that suit. It will not do to say the suit had been commenced and that it was not incumbent upon them to act until its termination, because the record shows that the debtor was unable to prosecute the suit and that but for the diligence of appellees it might have gone by default.

In this case the debtor parted absolutely with dominion and control over the thing assigned. Hensey's interest was completely extinguished except in the very uncertain event of an overplus, an event probably not expected by anyone. It seems, therefore, that this agreement as to overplus in the circumstances of this case was a mere incident to and not in any sense the reason for the assignment. Under the authority of *Leitch v. Hollister* (4 N. Y., 211) the reasoning of which was adopted by the Supreme Court in *Huntley v. Kingman*, supra, this overplus agreement would not have been deemed fraudulent had it been made public. The case then narrows itself down

to the question whether the mere fact that this agreement was not made public avoids the assignment. It must be borne in mind that we are not dealing with a mortgage which must be recorded; neither are we dealing with a case where the slightest misrepresentations, aside from that imputable to the instrument itself, have been made. Counsel might have entertained an honest doubt as to whether or not they could absolutely control the prosecution of the suit assigned unless it appeared that their assignment was absolute. Entertaining that view, there was no place where the defeasance agreement could have been recorded, and we are unable to discover wherein the other creditors were in the slightest degree prejudiced because of the failure on the part of the assignees to publish the fact of this defeasance agreement.

In *Muchmore v. Rudd* (53 N. J. L., 369) this question was carefully and exhaustively treated. There a verbal agreement as to overplus accompanied the bill of sale of the insolvent debtor to a third person for the benefit of preferred creditors. The court treated the transfer as a mortgage, and after reviewing the authorities held that inasmuch as the thing assigned was of less value than the debts secured nothing was fraudulently put beyond the reach of creditors. There was a dissenting opinion in the case, but it was put upon other grounds, the writer of the opinion regarding the question as to the reservation of the surplus as "one of very minor importance" in that case.

In the present case the thing assigned was of uncertain value and its subsequently ascertained value proved to be less than the debt preferred. The preferred creditors were compelled to expend a very substantial sum of money and considerable time and effort in recovering on the suit assigned them. Because it is now discovered that when they took the assignment they were not actuated by a desire to retain out of the proceeds thereof more than their claim and actual expenses, we are asked to hold that they perpetrated a fraud upon other creditors, and this notwithstanding that it must then have been clear to them that a surplus was a very remote contingency.

An honest debt existing, all fraud being denied, no actual fraud or deceit being shown, and the value of the thing assigned being less than the debt, we do not believe equity requires us to deprive these diligent creditors of the fruit of their efforts.

The decree below will be affirmed with costs.

Affirmed.

**Carriers.**—A two-cent passenger-rate act is held, in *Pennsylvania R. Co. v. Philadelphia County*, 220 Pa., 100, 68 Atl., 676, 15 L. R. A. (N. S.), 108, to violate a constitutional provision forbidding the legislature to do injustice to the corporators of the railroad company by the alteration of rates when, although not amounting to actual confiscation, it has an inevitable tendency thereto.

That a carrier has chartered a train and given the charterers the sole privilege of collecting fares and fixing their amount is held, in *Kirkland v. Charleston & W. C. R. Co.* (S. C.), 60 S. E., 668, 15 L. R. A. (N. S.), 425, not to exempt it from liability for the ejection of a passenger therefrom, on the ground that the charterers in so doing are the agents of the carrier, which can not by contract relieve itself from liability for their wrongful acts.

**Court of Appeals of the District of Columbia**

HENRY B. F. MACFARLAND, HENRY L. WEST AND JAY J. MORROW, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

v.

JAMES ELVERSON APPELLEE.

**CONDEMNATION PROCEEDINGS; RIGHT OF WAY FOR SEWER; POWER OF DISTRICT COMMISSIONERS TO INSTITUTE.**

1. Section 483 Code D. C., authorizing proceedings by the Commissioners of the District of Columbia to condemn lands for sites for schoolhouses, fire or police stations, or rights of way for sewers, or for any other municipal use authorized by Congress, construed and held to confer upon the Commissioners the power, in their discretion and without special authority from Congress, to institute proceedings to condemn a right of way for a sewer.
2. The words "authorized by Congress," in said section, limit only the words, "or for any other municipal purpose," and are not applicable when the object of the proceeding is to condemn lands for schoolhouses, fire or police stations, or rights of way for sewers.
3. Nor can it be urged, as an objection to the institution by the Commissioners of proceedings to condemn a right of way for a sewer, that at the time the proceeding is begun no appropriation has been made by Congress to pay for the land proposed to be taken.

No. 1885. Decided November 4, 1908.

APPEAL by Commissioners of the District of Columbia from a judgment of the Supreme Court of the District of Columbia, holding a District Court (No. 749), dismissing a petition to condemn a right of way for a sewer. Reversed.

Mr. E. H. THOMAS and Mr. J. F. SMITH for the appellants.

Mr. F. D. MCKENNEY and Mr. F. E. CHAPIN for the appellee.

Mr. Justice VAN ORSDEL delivered the opinion of the Court:

The record in this case discloses that the appellants, the Commissioners of the District of Columbia, plaintiffs below, filed a petition on October 7, 1907, in the Supreme Court of the District of Columbia seeking to condemn a right of way for the construction of a trunk sewer between Wisconsin avenue and Rock Creek, north of "T" street, as the same appears on the street extension plan of the city of Washington. The line of the proposed sewer is not along any street, but extends chiefly through private grounds. On the same day that the petition was filed, a citation was issued citing the persons interested to appear and answer the petition before the 28th day of October, 1907. Personal service of the citation was made by the marshal upon all persons therein named who could be found in the District of Columbia, and service was also made by publication, as required by law. On October 29, 1907, the court made an order appointing three commissioners to appraise the value of the respective interests of the persons concerned in the land proposed to be taken under the condemnation proceedings. The commissioners qualified on October 31, and, on November 1, notice of hearing before the commissioners was given, fixing the date of the hearing for the 13th and 14th days of November, at the United States courthouse in this District.

On November 16, 1907, the counsel for appellee James Elverson appeared specially and protested to the jurisdiction of the commissioners to proceed further under the order of the court, on the following grounds

"First. No such notice of intention to appoint said commissioners to condemn said lands as is required by the statute in such case made and provided, was given to said James Elverson.

"Second. Said commissioners are without lawful authority to proceed to appraise the value of the right of way for the projected trunk sewer through said parcel or to assess either damages or benefits on account thereof because, (a) of the failure to give such notice as above specified, (b) of the absence of any statutory authority providing for the appointment of said commissioners.

"Third. The Supreme Court of the District of Columbia was without jurisdiction and authority to appoint said commissioners because (a) of insufficiency of notice in so far as the lands belonging to said James Elverson is concerned, (b) of the absence of any statute whatsoever authorizing the appointment of commissioners for the purpose of condemning such lands for the right of way of the sewer in question."

Thereafter, appellee, by his attorneys, appeared specially, and moved the court, after enumerating the grounds of objection substantially as set forth in the above protest, to issue a rule addressed to the Commissioners of the District of Columbia to show cause, on a day convenient to the court, why the order heretofore made should not be rescinded and the petition dismissed. Within the time allowed, plaintiffs made their return to the rule, alleging that said petition was filed under the general authority conferred upon the Commissioners of the District of Columbia to condemn land for a right of way for sewers under section 483 of the Code of the District of Columbia; that, according to the provisions of the act of Congress of June 11, 1878 (20 Stats., 104), they submitted to the Secretary of the Treasury estimates for appropriations necessary for the fiscal year ending June 30, 1908, which included \$150,000 for suburban sewers; that this item for suburban sewers was submitted as a whole, in accordance with a long-established practice in submitting such estimates; that the Secretary of the Treasury approved and transmitted to Congress the estimate so submitted, and that Congress appropriated for suburban sewers the sum of \$100,000. In the return, plaintiffs further alleged that the Commissioners filed their petition herein, after being advised that the appropriation of Congress for the construction of suburban sewers authorized them to construct such sewers to the extent of said appropriation, and that, under the authority of the said appropriation, and the provisions of section 483 of the District Code, they undertook, as they were advised it was their duty to do, to acquire the right of way for the sewer here in question.

To this return appellee filed a special demurrer in words as follows: "That as fully appears from respondents' return to said rule to show cause that neither the project of acquiring a right of way for a sewer through the parcel of land called Clifton, or elsewhere, nor the estimated cost thereof, has been submitted to the Secretary of the Treasury in detail, as required by law, and no appropriation for for such purpose has ever been made by the Congress, nor has the acquisition and use of

such a right of way been authorized by the Congress, and in the absence of the submission of such an estimate to the Secretary of the Treasury for his approval, or the making of such appropriation and the authorization of such acquisition and use by the Congress, said respondents are without lawful power to maintain these proceedings. Wherefore your orator says that the order entered herein by this honorable court on or about the 29th day of October, A. D. 1907, appointing commissioners to assess damages and benefits in connection with the condemnation of a right of way through said tract or parcel of land known as Clifton should be revoked and held for naught."

On March 2, 1908, the court entered a decree sustaining the demurrer to the return, and, the plaintiffs electing to stand upon their return, the court, by the same decree, dismissed the petition and held the proceedings thereunder for naught. From this judgment, the appellants prosecute this appeal.

The appeal is based on the following assignments of error:

"The court erred in sustaining the demurrer of the appellees to return to the rule to show cause aforesaid.

"The court erred in dismissing the petition filed herein and the proceedings subsequent thereto."

The issue before us narrows itself to the proper construction to be placed upon section 483 of the Code of the District of Columbia. This section is as follows:

"Sec. 483. Whenever land in the District is needed for the use of the United States, or by the Commissioners of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and the same can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the Government authorized to negotiate for the same, application may be made to the Supreme Court of the District by petition in the name of the United States or of said Commissioners, as the case may be, for the condemnation of said land or said right of way and the ascertainment of its value."

It is well established that statutes providing for the condemnation of private property for a public use must be strictly construed. If any doubts exist as to the authority to proceed under such statutes, these doubts must be resolved in favor of the person whose property is sought to be taken. The power to condemn private property for a public use is one commonly conferred upon municipal corporations. Hence, if Congress has here seen fit to confer upon the Commissioners of the District of Columbia this power, it would be rather in accord with, than an exception to, the usual custom.

When the power to condemn and take property for a public use has been by general statute conferred upon municipal officers by the proper legislative authority, it rests with such officers to determine whether it shall be exercised, and when and to what extent it shall be exercised. This discretion lies entirely with the local authorities. It is for them to determine when a public improvement is necessary, and, so long as they do not exceed or abuse the power delegated to them, the courts are powerless to inquire into the motives which actuate them or the propriety of the contemplated improvement. Chapter 15 of the Code

of the District provides a complete process by which the Commissioners of the District, in certain instances, may acquire private lands for the public use. It is contended, however, by counsel for appellee, and so held by the court below, that this power can be exercised by the Commissioners only when specially authorized by Congress. In other words, it is insisted that no discretion has been lodged in the Commissioners by section 483, and that they can only act when directed by Congress in each particular case. Appellants insist that, in the case of sites for schoolhouses, fire or police stations, or for a right of way for sewers, the Commissioners have authority to proceed to condemn such lands as they may deem necessary, without further authority from Congress; and that, as to these particular uses, Congress has delegated full power to the Commissioners.

This brings us to an interpretation of the provisions of section 483 of the Code. It provides that the Commissioners may condemn lands for "sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress." Counsel for appellee contends that the words "authorized by Congress" limit all that precedes it, and that the Commissioners have only power to condemn when Congress has authorized them to acquire a particular site for a schoolhouse, fire or police station, sewer, or other municipal purpose. Counsel for appellants contend that the words "authorized by Congress" limit only the words preceding them in the same phrase, "or for any other municipal purpose," and have no reference to the preceding phrases. With appellants' contention we agree. It is an ordinary rule of statutory construction that in a case like this the exception is confined to the last antecedent *Commonwealth v. Kelley*, 177 Mass., 221. We are materially assisted by the punctuation of the statute. The use of a comma after the general expressions and before the special phrase in which the words "authorized by Congress" are used, clearly indicates an intention on the part of Congress to confer upon the Commissioners full power and discretion in the condemnation of land for sites for schoolhouses, fire or police stations, and for a right of way for sewers, reserving to itself the discretion and power to direct as to all other municipal purposes. While the punctuation in this case may be of material assistance in ascertaining the intention of Congress, we recognize the uncertainty of this rule of interpretation. As said in *Ewing v. Burnet* (11 Pet., 41): "Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent, on judicially inspecting the whole, the punctuation will not be suffered to change it." Examining closely the statute before us, we find that the contention of appellee leads to an ambiguity of expression on the part of Congress. If he is correct, why the necessity of mentioning in the statute "sites of schoolhouses, fire or police stations, or for a right of way for sewers?" The statute would have been complete to have read: "Whenever land in the District is needed for the use of the United States, or by the Commissioners of the District for any municipal purpose authorized by Congress, and the same can not be acquired by purchase," etc. The por-

tion of the statute enumerating the purposes for which condemnation of land may be made consists of four separate and distinct phrases, each designating, complete within itself, an instance in which the Commissioners may act. In the first three, no limitation is placed upon the power of the Commissioners. In the fourth, Congress reserves to itself the power to direct when and where the authority of the Commissioners may be exercised. A case closely analogous to the one here under consideration is that of *Tyrell v. Mayor*, 159 (N. Y., 239), where the court was considering a statute providing for the compensation of various classes of officers and employees. The language used in the statute was, in part, as follows: "The annual salaries and compensation of the members of the uniformed force of the department of street cleaning especially fixed by the board of estimates shall not exceed the following: Of the general superintendent, \$3,000; of the assistant superintendent, \$2,500; of the master mechanic, \$1,800; . . . of the time collectors, \$1,200; of the section foremen, \$1,000 each; . . . of the hostlers, \$720 each, and extra pay for work on Sundays." It was contended that the words, "extra pay for work on Sundays," related to all the previously enumerated employees, but the court held that it related only to the class mentioned in the particular phrase in which it was used.

It will be observed that the provision of the statute relating to sewers is general. It makes no distinction between trunk and service sewers. It reposes in the Commissioners full discretion, not only as to the necessity for sewer construction, but as to their location. It would seem that a general act of this kind was intended more especially to relate to trunk sewers, since it appears that service sewers, under the law in force in the District, are required to be constructed in streets and alleys, where no condemnation of land for the right of way is necessary.

This brings us to the second and minor contention of appellee that no appropriation had been made by Congress to pay for the lands here sought to be condemned. It is unnecessary to pass upon the question of whether or not the Commissioners could have used any part of the \$100,000, then appropriated and available for the construction of suburban sewers for the payment of the right of way here sought to be condemned. The time had not come in the course of these proceedings when appellants could be called upon to answer that question. It is to be presumed that appellants would not have instituted condemnation proceedings unless they had the money to pay for the property taken. They would hardly have undertaken a useless thing. If they had not the money with which to make such payment, it is difficult to understand just how the appellee could be damaged. He could not be divested of his property until payment had been made. D. C. Code, section 486. The question of ability to pay was not one that could be properly raised until after the award had been made by the commissioners appointed to make the appraisal, the confirmation thereof by the court, and its acceptance by the Commissioners of the District. These proceedings were stopped before the award was made. After award and confirmation, it would have been optional with the Commissioners to pay the award and take title to

the land for the District, or to elect not to take the property at the price named by the appraisers. D. C. Code, section 491. It is immaterial at the present stage of this inquiry whether there was money available or not for the payment of an award that might have been made by the appraisers, that might have been confirmed by the court, and that might have been accepted by the Commissioners of the District. The ability of the Commissioners to pay was something with which no one was concerned until they had elected to abide by the verdict of the appraisers, and even then the title of appellee would have been secure until full payment had been made. The mere fact that no appropriation has been made to pay for land sought to be taken under the provisions of the Code at the time the condemnation proceedings for that purpose are instituted, is no argument in favor of the contention that funds will not be available for such payment when the time arises in the due course of the proceedings when the proper authorities may be called upon to make such payment. It is not the kind of a contingency that should invoke the conjecture of the court.

The judgment will be reversed with costs, and the cause remanded with instructions to proceed in accordance with the views expressed herein.

Reversed.

#### THE DISTRICT OF COLUMBIA ET AL., APPELLANTS,

v.

THOMAS BLACKMAN.

PRACTICE; BILLS OF EXCEPTIONS; NEGLIGENCE; INDEPENDENT CONTRACTOR; LIABILITY OF DISTRICT FOR NEGLIGENCE OF LICENSEE; NOTICE.

1. A motion to dismiss an appeal denied where it appeared the bill of exceptions was submitted to the court before the expiration of the prolonged term, but was not actually signed by the court until after the term expired, when it was then signed *nunc pro tunc*.
2. In an action for personal injuries caused by falling into an excavation in a sidewalk, the question of whether or not plaintiff was exercising due care and caution held properly left to the jury.
3. An owner of property for whose benefit work is being done, requiring an excavation in the sidewalk, must take proper precaution to prevent the creation of a nuisance, and can not escape liability on the ground that an injury resulting was due to the negligence of his contractor.
4. The District of Columbia, by issuing a permit for work calling for an excavation in a sidewalk, must exercise reasonable care to see that its conditions are obeyed and the safety of the public assured; but this does not constitute it an insurer of the public nor require it instantly to take notice of the failure of a licensee to fulfil his obligations under the license.
5. Where it appeared that the conditions of the permit, by which the safety of the public was provided for, were fulfilled until within a few minutes prior to the accident, held that knowledge of the negligence of the licensee could not be imputed to the District, and a judgment against it reversed.

No. 1881. Decided November 4, 1908.

APPEAL by defendants from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,438, entered upon the verdict of a jury in an action for personal injuries. Affirmed as to defendants Bogley et al.; reversed as to District of Columbia.

Mr. E. H. THOMAS, Mr. HENRY P. BLAIR and Mr. T. PERCY MYERS for the appellants.

Mr. WHARTON E. LESTER for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This is an appeal from a judgment of the Supreme Court of the District on a verdict obtained by appellee against appellants and one Lockhead for personal injuries sustained by falling into a hole in the sidewalk on T street in this city. The Bogleys, owners of the property in front of which the accident occurred, began the construction of two houses, and applied to the District for and were granted a permit to make the excavation into which appellee fell. The application and permit follow:

"This application is not a permit.  
No. 356. Book 137.

WASHINGTON, April 12, 1907.

I hereby apply for permission to make the necessary excavation in roadway for the purpose of running 5 in. cast iron sewer in houses 3418, 3420 Reservoir st. N. W.

I desire to have the work done by Chas. Lockhead & Co., a registered plumber, who is authorized to obtain the necessary permit, the conditions of which I will acquaint myself with before the work is commenced.

(Signed) J. W. BOGLEY & BRO.,  
Address, 1335 Wis. ave.,  
Owner of Premises.

I hereby agree to do the above-described work in accordance with the plumbing regulations of the District of Columbia.

(Signed) CHAS. LOCKHEAD & CO.,  
Registered Plumber.

Received of Chas. Lockhead & Co. \$2. Permit Fee. To be returned if a permit is refused upon this application.

E. G. DAVIS,  
Collector of Taxes, D. C.  
(Signed) W. R. J.

Asst. Cashier."

"Engineer Department, District of Columbia.  
No. 179. Book 140. WASHINGTON, Oct. 10, 1907.

Permission is hereby given, subject to conditions named below, to Chas. Lockhead & Co., a registered plumber, for J. W. Bogley & Bro. owner of premises 3318 & 20 Reservoir st. to make the necessary excavation for the purpose of connecting with sewer in roadway, said work to commence on the 10th day of Oct., 1907, and be completed within five days from that date.

The conditions of this permit are as follows:

It is required that each permit for an excavation in a public street be taken out before the work is commenced; that it be kept at the place of excavation while the work is being done and be exhibited whenever called for by the police or other person having authority to examine the same; that no authorized underground construction be injured or interfered with; that no asphalt, coal-tar, concrete, granite or other improved surface be disturbed, unless a deposit shall have been made to cover the cost of repairing the same; that subject to the provision of these regulations all portions of the street excavated be put in as good condition as before the excavation was made; that the trench be filled up and thoroughly rammed (and puddled, if required) within forty-eight hours after making the connection or repairs, the ramming to be done in

six inch layers; and that all rubbish or other foreign material be removed within the time designated for the completion of the work, after which the permit shall become void and of no effect; that during the execution of this work the trench be suitably guarded during the day, and that it be thoroughly covered and securely barricaded from sunset to sunrise, and that lighted red lamps be so placed before dark, every night, as to prevent accidents to persons or animals passing along the street; and that the District of Columbia be protected and saved harmless from the consequences of an injury to any person or property, due to the execution of the permit issued by said District of Columbia to any person or corporation to excavate in any public street.

By order of the Engineer Commissioner, D. C.  
(Signed) H. M. WOODWARD,  
Permit Clerk. B.

Permit fee \$2.00."

The Bogleys employed Lockhead to install the plumbing work in the houses, which included the excavation mentioned in the permit.

The evidence of the appellee, plaintiff below, tended to show that at about 3 o'clock on the afternoon of the 16th day of April, 1907, he was walking along the sidewalk in front of said houses and paused for the purpose of noting the progress of the work; that to get a better view he stepped either a little to one side or a little backwards, and fell into the excavation which was in the asphalt sidewalk and about 2 feet 6 inches wide, 2 feet 9 inches long, and 7 or 8 feet deep; that there was no protection whatever over or immediately around the excavation, which occupied about one-third of the width of the sidewalk.

The evidence on the part of the defendants tended to show that the excavation under the permit was commenced about the 13th of April and was completed about 11 o'clock the day of the accident; that the excavation was properly protected at night; that after the excavation was completed one laborer remained "waiting for the material to come, the piping to put in this hole;" that this laborer sometime prior to the accident, estimated by him as fifteen or twenty minutes, went "around the back, to the toilet," and did not hurry back because he was still waiting for the material and "had nothing to do;" that there was more or less earth and some concrete blocks about the hole when the accident occurred. It further appeared that the defendant Lockhead saw the hole the morning of the accident; and there was testimony that the Bogleys were on the premises almost every day. John W. Bogley was not certain whether or not he inspected the work the morning of the accident, but he did testify that he "usually dropped off the car there, and then walked down" to his place of business. There was no testimony that anyone was specifically directed to guard the hole after its completion.

The only exceptions taken relate to the refusal of the court to give certain requested instructions.

A preliminary question must be first disposed of. Appellee filed a motion in this court to dismiss the appeal herein on the ground that the bill of exceptions was not settled until after the term in which the judgment was entered had expired. It appears that the bill was submitted to the court on February 18, 1902, two days before

the expiration of the prolonged term, and, therefore, within the rule; and that some discussion having arisen between counsel for the respective parties, the bill was not actually signed by the court until after the prolonged term had expired. We think there was a substantial compliance with the rule. The bill was filed within the prescribed time and signed *nunc pro tunc* by the court. Having done all they could to comply with the rule, manifestly appellants ought not to be prejudiced because the court in its discretion deferred the actual signing of the bill until after the expiration of the term. *U. S. v. Breitling*, 20 How., 252.

At the close of all the evidence a peremptory instruction for all the defendants was requested, and, being refused, the defendants severally and separately excepted. Thereupon the defendants Bogley requested an instruction to the effect that Lockhead was an independent contractor while prosecuting the work which caused the injury, and that, therefore, they were not liable. This request was also refused and an exception duly noted.

It was urged in the argument at bar that the plaintiff by contributory negligence defeated his right of recovery. This contention we put to one side with the observation that in the circumstances of the case as developed by the evidence it was clearly for the jury to determine whether the plaintiff at the time he fell into the hole was exercising due care and caution. *Moshevel v. D. C.*, 191 U. S., 247.

It next becomes necessary to determine whether the appellants Bogley are chargeable with the negligence of their contractor Lockhead. The hole was dug at their instigation and for their benefit, and they knew, or should have known, that unless it was properly protected serious consequences might arise. The accident that did ensue was the direct result of the work Lockhead under his contract with them had agreed to perform. The owner of a lot for whose benefit work like this is performed must take proper precaution to prevent the creation of a nuisance. He can not escape liability for the natural and direct results that flow from digging a hole in a city sidewalk by hiding behind his contractor. *Robbins v. Chicago*, 71 U. S., 678; *Cleveland v. King*, 132 U. S., 295.

The evidence shows that this hole occupied about a third of the width of the sidewalk and was seven or eight feet deep—a veritable man-trap. The plaintiff's testimony tended to show, and the jury evidently found, that nothing whatever was about the hole to warn those passing of its existence. The laborer, who remained after the work was completed, testified that he had nothing to do and was there because he was waiting for material. He did not testify that anyone directed him to stand guard over the hole or protect it in any way after its completion. Nor did Lockhead or either of the Bogleys testify that they made any provision for the protection of the hole after its completion. It would have been a very simple and easy matter to have covered a hole of that size. Why was it not done? Because some one was negligent. The permit, the terms of which the Bogleys in their application agreed to acquaint themselves with, required that the trench "be suitably guarded during the day." It was not guarded or protected, and we see no escape from the conclusion that the Bogleys were as

much responsible for the ensuing consequences as Lockhead, who merely did the digging.

The remaining question necessary to be considered relates to the refusal of the court to direct a verdict for the District.

Having issued the permit authorizing the hole to be dug the District was chargeable with knowledge of the prosecution of the work and the duty of supervision over it to the end that the safety of the public be secured. Was the District remiss in its duty? The work was commenced three days prior to the accident, and until the trench was fully dug the requirements of the permit as to protection were complied with. It, therefore, clearly appears that in the first instance the District was not guilty of negligence because sufficient protection was provided to guard the public against danger. From the completion of the excavation at eleven o'clock in the forenoon of the day plaintiff was injured until within a very short time prior to the accident one of the men employed in digging the hole remained near it. A representative of the District seeing this laborer near the hole he had assisted in digging, and apparently guarding it, naturally and reasonably would have inferred that he had been placed there, not merely to await the coming of material to be put into the hole, but to warn the public of the existence of the hole, and thereby fulfill the conditions of the permit.

There was no evidence before the jury that the District had knowledge, either actual or constructive, of the unguarded condition of the hole at the time plaintiff fell into it. On the contrary, the circumstances, as disclosed by the evidence, were such as to warrant the District in believing that the conditions of its permit were continuing to be carried out. If, therefore, in the circumstances of this case, the District is to be chargeable with liability, we must, in effect, impose upon it the duty of placing a representative in direct supervision over every similar work in the District. We do not so understand the law.

Dwellings being even more necessary than streets or sidewalks, permits for their erection and work incident thereto must, of course, be granted. Having issued a permit the District must exercise reasonable care to see that its conditions are obeyed. But that does not constitute the District an insurer of the public nor require it instantly to take notice of a failure on the part of a licensee to fulfill his obligations under the license. No hard and fast rule can be made because each case must be determined according to the facts and circumstances surrounding it. What would be due care in one case might constitute negligence in another.

In *D. C. v. Woodbury* (136 U. S., 450), relied upon by appellee, the facts were different. There the hole causing the accident had been *insecurely* covered for fifteen or eighteen days prior to the accident, and there was a question whether it had ever been properly protected. It did not appear, therefore, that due care was in the first instance observed by the District. The opinion states: "The burden is on the plaintiff to prove either that the thing was originally dangerous or had become so long enough before the accident for the authorities to have known it, so as to impose upon them the obligation to put it in proper condition."

*Cleveland v. King* (132 U. S., 295), is more in point. That was an action to recover damages



for personal injuries sustained in consequence of an alleged failure of the city of Cleveland to exercise due care in keeping one of its streets in safe condition for public use. A permit had been issued authorizing the obstruction for building purposes of not more than one-half of a certain street. The declaration alleged that the parties to whom the permit issued obstructed more than one-half of the street and suffered the obstruction to remain during one day and during the nighttime of that day unprotected and unguarded, and that by reason of such negligence the plaintiff, while passing along the said street in the nighttime in a buggy, collided with said obstruction and was seriously injured. The court said: "The fact that the permits to Rosenfeld and Kosterling only authorized them to occupy one-half of the street for the purpose of depositing building materials thereon, and required them to indicate the locality of such materials by proper lights during the whole of every night that they were left in the street, did not relieve the city of the duty of exercising such reasonable diligence as the circumstances required to prevent the street from being occupied by those parties in such a way as to endanger passers-by in their use of it in all proper ways." See, also, *Wash. Gas-Light Co. v. D. C.*, 161 U. S., 316.

In the present case, the District having fulfilled its duty in the first instance, we do not think there was any evidence before the jury tending to show negligence on the part of the other defendants for a sufficient length of time before the accident to impute knowledge of such negligence to the District. This is equivalent to saying that there is not sufficient evidence in the record to support a judgment against the District, and that, therefore, its prayer for a directed verdict should have been granted.

The judgment will be affirmed, with costs, against the appellants Bogley, and reversed with costs to the District of Columbia, and cause remanded for further proceedings not inconsistent with this opinion.

Affirmed in part and reversed in part.

**Cancellation.**—The mutual mistake of the parties to a deed as to the extent of the grantor's interest in the land at the time it was conveyed is held, in *Burton v. Haden* (Va.), 60 S. E., 736, 15 L. R. A. (N. S.), 1038, to be one against which equity will afford relief.

**Copyright.**—That the statutory copyright confers a right to control the price at which copies of a book shall be sold is denied in *Bobbs-Merrill Co. v. Straus*, 77 C. C. A., 607, 147 Fed. 15, 15 L. R. A. (N. S.), 766.

**Libel.**—The reading by plaintiff and his wife of libelous letter concerning plaintiff and addressed to his wife is held, in *Kramer v. Perkins*, 102 Minn., 455, 113 N. W., 1062, 15 L. R. A. (N. S.), 1141, to constitute a publication thereof.

**Liens.**—The lien of one advancing money to a lessee on the security of a building removable by him before the expiration of the term is held, in *Hughes v. Kershaw* (Colo.), 93 Pac., 1116, 15 L. R. A. (N. S.), 723, to become ineffective upon the expiration of the lease.

## Court of Appeals of the District of Columbia

MARY M. GALLOWAY, IN HER OWN RIGHT  
AND AS EXECUTRIX OF THE ESTATE OF  
ELIZABETH C. GALLOWAY, DECEASED,  
APPELLANT,

v.

THOMAS F. GALLOWAY ET AL.

WILLS; CONSTRUCTION OF PROVISION; PARTIAL INTEREST.

1. Testatrix by her will gave to two sons five dollars each, and to her only other child, a daughter, she gave a certain house and lot, and also "all my household furniture, clothing and personal effects," which included money in bank. Subsequent to the date of the will the house devised to the daughter, which was all the real estate owned by testatrix, was sold and at her death the money was on deposit in bank. In a suit to construe the will, held that under the circumstances of the case, the term "personal effects," in the bequest to the daughter, was intended to and did embrace all personal estate of the testatrix, including the money in bank derived from the sale of the house, after payment of the sums specifically provided in the will.
2. It is the duty of the court, in construing a will, where it can with consistency, to accord with the general rule that no presumption of an intent to die intestate as to any part of his property is allowable when the words of the will may fairly carry the whole.

No. 1880. Decided November 4, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 27,096, in a suit to construe a will. Reversed.

Mr. W. J. LAMBERT and Mr. EDWARD MCLEAN for the appellant.

Mr. MALCOLM HUFTY for the appellees.

Mr. Justice VAN ORSDER delivered the opinion of the court:

Appellant, plaintiff below, filed a bill in equity in the Supreme Court of the District of Columbia praying the court to construe the terms of the last will and testament of Elizabeth C. Galloway and to direct the way in which the property devised therein should be administered. The bill, in substance, alleges that, on the 24th day of August, 1906, Elizabeth C. Galloway, mother of the complainant and of the two defendants, died in the city of Washington, District of Columbia; that at the time of her death her sole heirs at law were complainant and the two defendants; and that the deceased died testate, having left a last will and testament, of date the 13th day of June, 1904. Said will reads as follows:

"I, Elizabeth C. Galloway, of the city of Washington, District of Columbia, being of sound mind, memory and understanding, considering the certainty of death and the uncertainty of the time thereof, hereby make, publish and declare this, my last will and testament in manner and form following, that is to say:

"First. After the payment of all my just debts and funeral expenses, I give, devise and bequeath to my beloved daughter, Mary M. Galloway, house No. 3514 Thirteenth street, northwest, in the city of Washington, District of Columbia, together with the land upon which house is located and that adjacent to or in connection therewith which is owned by me, to said Mary M. Galloway, absolutely and in fee simple. I further give, devise

and bequeath to said Mary M. Galloway, all of my household furniture, clothing, and personal effects, absolutely.

"Second. I give, devise and bequeath to my sons, Thomas F. Galloway and S. Albert Galloway, the sum of five dollars (\$5.00) each.

"And lastly, I do hereby constitute and appoint my said beloved daughter, Mary M. Galloway, to be executrix of this, my last will and testament, and I hereby revoke and annul all former wills by me made, ratifying and confirming this and none other to be my last will and testament."

This will was properly executed and witnessed by three disinterested witnesses. The bill further alleges that, after the death of the said deceased, the petitioner filed the said will for record in the Probate Court of the District of Columbia; that said will was admitted to probate and record as a will of both real and personal property, and letters testamentary were issued to plaintiff in accordance with the directions of said will. Plaintiff further alleges that, at the time of making the will, her mother's entire estate consisted of a house known as No. 3514 Thirteenth street, northwest, in the city of Washington, District of Columbia, together with the land upon which the house was located, and of a small sum of money in bank and the household furniture, clothing and personal effects. It is further alleged that just prior to her death, the deceased decided to sell the property, No. 3514 Thirteenth street, northwest, and did, in fact, dispose of the same a short time before her death and deposited the money derived therefrom, amounting to about \$3,300, in the Union Trust Company, in the city of Washington, where the said funds were found after her death, and were subsequently turned over to the plaintiff as executrix. The plaintiff further alleges that, since she has obtained the probate of said will and received the fund referred to, she has been advised that the defendant, Thomas F. Galloway, is unwilling that the fund should be considered in lieu of the house from which it was derived, and insists that he, as the heir of his deceased mother, is entitled to one-third thereof. Plaintiff further alleges that, under a proper construction of said will and the intention to be derived therefrom, she is entitled to receive said fund, after the payment of the legacies, expenses and debts of said estate, as a residuary part of said estate.

To this bill, defendant S. Albert Galloway filed an answer admitting the allegations of the bill and relinquishing any claims that he might have under the will in favor of the plaintiff. Defendant Thomas F. Galloway demurred specially to the bill on two grounds, as follows:

"1. That the sale before her death of the real estate mentioned in the will of Elizabeth C. Galloway revokes the devise of said real estate.

"2. That as said will contains no residuary clause the proceeds derived from the sale of said real estate, after the payment of the specific legacies mentioned in said will, go to the next of kin of said Elizabeth C. Galloway."

On hearing, the court sustained the demurrer and dismissed the bill of complaint with costs, from which judgment this appeal was taken.

There are two questions to be here answered from an interpretation of the terms of the will: Does this will contain a residuary clause, and, if so, what passed under it? These queries can be answered intelligently only after a careful exam-

ination of the terms of the will. It will be observed that the testatrix recognizes all her direct heirs in the will. She first expresses her wish as to her two sons by a direct specific bequest to each of the sum of \$5. She then proceeds to devise the remainder of her estate to her daughter, her only remaining child. We think the manner in which the express limitation has been placed upon the amount which she wished to bequeath to each of her sons is inconsistent with any intention on her part that any portion of the balance of the estate should descend to the sons. The terms of the will are equally inconsistent with any intention on the part of the testatrix to leave any portion of her estate to descend under the intestate laws. It is the duty of the court, where it can with consistency, to "accord with the general rule that no presumption of an intent to die intestate as to any part of his property is allowable when words of the testator's will may fairly carry the whole." *Given v. Hilton*, 95 U. S., 591. The law frowns upon a construction of a will that admits of a partial intestacy. In the case at bar, not only did the mother, by the terms of the will, specifically dispose of the interest of the two sons, but, after devising the real estate to the daughter, provided that the daughter should have all of her "household furniture, clothing, and personal effects absolutely."

The provisions of the will did not become effective until the death of the testatrix. At that time she had converted the real estate into money, which was deposited in bank and afterwards turned over to this appellant as executrix. This money had become part of the personal estate. The demurrer admits the allegation of the bill that there was other money in bank besides the proceeds of the sale of the real estate which came into the hands of appellant as a part of the "personal effects" of the deceased. Hence, it would seem that the words "personal effects" in this instance can not be limited to the things ejusdem generis enumerated—"household furniture and clothing." As the court said in the case of *Given v. Hilton*, supra: "It is doubtless true the construction of wills, as well as of statutes, where certain things are enumerated and a more general description is coupled with the enumeration, that description is commonly understood to cover only things ejusdem generis with the particular things mentioned. This is because it is presumed the testator had only things of that class in mind; but this rule of construction rests on a mere presumption, easily rebutted by anything that shows the larger subject was, in fact, in the testator's view." In the present case it is manifest that the testatrix had in mind not only the disposition of all her estate, but that she intended that the daughter should have any residue left after the payment of the debts, funeral expenses, and specific bequests to the two sons.

We find no difficulty in drawing this conclusion from the terms of the will and the admitted facts before us. It places an express limitation on the amount of the estate that should go to the two sons. There was money in bank at the time of the execution of the will, which was embraced within the term "personal effects," showing clearly that the testatrix had in mind more than was embraced in the preceding enumeration, "household furniture and clothing." We think the term "personal effects" was intended to and does embrace all the personal property owned by the testatrix at the

date of her death, and is, therefore, broad enough to embrace all the residue of the estate, after the payment of the sums specifically provided for in the will.

The judgment is reversed with costs and cause remanded with instructions to proceed in accordance with the views expressed herein.

Reversed.

#### Amendment to Common Law Rules 54, 55, 56, and 57.

The Supreme Court of this District, in general term, has promulgated the following amendment to the Common Law Rules:

Ordered, that the Common Law Rules of this court, Nos. 54, 55, 56, and 57, be, and they hereby are, rescinded, except the provision in Rule 55 that relates to motions for new trial and arrest of judgment. It is further ordered that the following Common Law Rules be, and they hereby are, adopted and promulgated in lieu of said rescinded rules, to wit:

#### Bills of Exceptions.

Rule 56. Exceptions to rulings or instructions must be taken at the time, and several exceptions may be included in one bill.

Rule 57, Sec. 1. The bill of exceptions shall be prepared by counsel. If not settled before the jury retires, counsel tendering it shall give two days' notice in writing to opposing counsel of the time at which it is proposed to submit the same to the court to be settled, and shall also, at least eight days before the time designated in such notice, present to opposing counsel the proposed bill or a copy thereof. The bill shall be submitted to the court within thirty-eight days after judgment shall have been entered, unless the court shall, for cause shown, extend the time.

Sec. 2. The fact of the settling and filing of the bill of exceptions shall be noted in the minutes of the court.

Sec. 3. If the court is unable to settle the bill of exceptions, a new trial shall be granted.

Sec. 4. The submission, settling, signing or filing of a bill of exceptions shall not be affected by the expiration of any term, provided this rule is complied with.

Sec. 5. This rule shall apply to pending cases. Promulgated November 11, 1908.

#### Legal Notices.

##### FIRST INSERTION.

Chas. J. Murphy, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Daly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of November, 1908. EDWARD V. MURPHY, 2511 Penna. ave. N. W.; MARY J. DALY, 2112 H St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,567. Administration. [Seal.] 46-31

#### Legal Notices.

Ralston & Siddons, Solicitors

In the Supreme Court of the District of Columbia.  
Ingram Memorial Congregational Church v. The Unknown Heirs, Devisees and Allenees of Matthew Standley and the Unknown Heirs, Devisees and Allenees of George P. Atwood.  
Equity No. 28,111.

The object of this suit is to declare complainant's title perfect by adverse possession to part of lot numbered one (1) in square nine hundred and forty (940), Washington, D. C., described as follows: Beginning for the same at the end of 20 feet from the southeast corner of said lot, and running thence north with the line of James Miller's property and parallel with Tenth street 100 feet; thence northwesterly, parallel with Massachusetts avenue, 35 feet; thence south, parallel with the first line, 100 feet to Massachusetts avenue; and thence with said avenue 35 feet to the place of beginning. On motion of the complainant, it is, this 6th day of November, 1908, ordered that the defendants, the unknown heirs, devisees and allenees of Matthew Standley and the unknown heirs, devisees and allenees of George P. Atwood, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise, the cause will be proceeded with as in case of default. Provided a copy of this order be published twice in one month in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-31

W. K. Quinter, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re Estate of Emily L. Truesdall, Deceased.  
No. 14,637. Adm. Doc. 37.

Upon consideration of the report of William K. Quinter, executor, this day filed, reporting the sale of part of lot 4, square 297, Washington, D. C., belonging to the estate of Emily L. Truesdall, to Christian Heurick for the sum of twenty-four thousand two hundred and fifty dollars (\$24,250.00) cash, net to the executor, it is, by the court, this 12th day of November, 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of December, 1908. Provided a copy of this order be published once a week for

[Seal] three successive weeks in The Washington Law Reporter. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-31

Gregory & Horner, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Harry H. Hargraves, alias Wm. H. Hargraves, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. H. D. WOODSON, 18 Quincy st. N. E., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,551. Administration. [Seal.] 46-31

I. Q. H. Alward, Solicitor

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.

Lulu C. Hemmerly, Complainant, v. Jacob H. Hemmerly and Mary A. Edwards, Defendants.  
Equity, No. 28,046.

#### ORDER OF PUBLICATION.

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 13th day of November, A. D. 1908, ordered that the defendants, Jacob H. Hemmerly and Mary A. Edwards, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-31

**Legal Notices.**

Henry H. Glassie, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frank M. Kiggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. DELIA KIGGINS, The Ashley, 18th and V sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,583. Administration. [Seal.] 46-8t

Chas. S. Shreve, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of John F. Garner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. JOHN F. GARNER, 1233 8th st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,584. Administration. [Seal.] 46-8t

Wm. J. Neale, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Stonestreet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of November, 1908. WM. J. NEALE, 508 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,597. Administration. [Seal.] 46-8t

Irving Williamson, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.  
In re Estate of Mary Macdaniel, deceased. No. 15,021. Upon consideration of the report of Norris Macdaniel, executor of Mary Macdaniel, deceased, it is this 10th day of November, 1908, adjudged and ordered by the court that the sale of lots 40 and 41, square 3926, Brookland, D. C., therein referred to, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 11th day of December next. Provided a copy of this order be published in The Washington [Seal] Law Reporter once a week for three successive weeks before said day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-8t

E. L. White, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph H. P. Benson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 12th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. BLANCHE V. BENSON, 1107 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,596. Administration. [Seal.] 46-8t

**Legal Notices.**

Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Opening of an Alley in Square 2859, in the District of Columbia. District Court, No. 794.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of sections 1808 et seq. of the Code of Laws for the District of Columbia have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square twenty-eight hundred and fifty-nine (2859) in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of an alley in square 2859, and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 10th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 30th day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Herald, The Washington Times, and The Washington Post, newspapers published in the said District, before the said 30th day of November, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, before the said 30th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-1t

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.  
Estate of Martha V. Milburn, Deceased.  
No. 15,405. Administration Docket—

Application having been made herein for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by American Security and Trust Company, it is ordered this 12th day of November, A. D. 1908, that Robert Milburn and all others concerned, appear in said court on Tuesday, the 15th day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-8t

W. E. Ambrose, Solicitor

In the Supreme Court of the District of Columbia.

Luella C. Roots, Complainant, v. Edward C. Roots, Defendant. No. 28,065. Equity Docket No. 62.

The object of this suit is to obtain an absolute divorce from the bonds of marriage subsisting between complainant and defendant because of acts of adultery committed by the defendant since the marriage. On motion of the complainant, it is this 3d day of November, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star newspaper and The Washington Law Reporter before [Seal] said day. By the Court: JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-8t

**Legal Notices.**

Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Widening of an Alley in Square 2854, in the  
District of Columbia. District Court, No. 798.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1608 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the widening of an alley in square twenty-eight hundred and fifty-four (2854), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the widening of an alley in square 2854 and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 10th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 30th day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, and The Washington Post, newspapers published in the said District, before the said 30th day of November, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 30th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-11

[Seal] before the said 30th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-11

Edward H. Thomas and Andrew B. Duvall, Attorneys  
In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re the Widening of an Alley in Square 127, in the  
District of Columbia. District Court, No. 792.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1608 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for widening of an alley in square one hundred and twenty-seven (127), in the District of Columbia, as shown on a plat or map filed with the said petition as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the widening of an alley in square 127 and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 10th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 30th day of November, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, before the 30th day of November, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal, or his deputies, upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, before the said 30th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-11

[Seal] before the said 30th day of November, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-11

**Legal Notices.****SECOND INSERTION.**

R. P. Shealey, Solicitor

In the Supreme Court of the District of Columbia.

Sarah F. J. Goode v. Joseph Parker Camp et al.  
No. 27,232, Equity Doc.—

The object of this suit is to perfect complainant's title by adverse possession to the east sixteen (16) feet front on P street by the full depth thereof, of lot thirteen (13), in John Harkness and others, commissioners, subdivision of square five hundred and ten (510) in the city of Washington, District of Columbia. On motion of the complainant, it is, this 19th day of October, 1908, ordered that the defendants, the unknown heirs, alienees, and devisees of Samuel Blodgett and of Elias B. Caldwell, trustee, and the unknown successors and assigns of the Washington Association and United States Insurance Company, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from this date; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a month for three months in The Washington Law Reporter and The Washington Times before said day. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. oct. 23, nov. 13, dec. 11.

R. Preston Shealey, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William H. Bohannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. CHARLES W. BOHANNON, 707 13th St. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,555. Administration. [Seal.] 45-34

John B. Lerner, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. Hannay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1908. THE WASHINGTON LOAN AND TRUST CO., by Fred'k Eichelberger. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,572. Administration. [Seal.] 45-31

Edward S. McCalmont, Attorney

Supreme Court of the District of Columbia,

Holding Probate Court.

This is to Give Notice That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of Frances H. Bryan, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of November, 1908. BENJAMIN C. BRYAN, by Edward S. McCalmont, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,842. Adm'n. [Seal.] 45-31

Justice blanks of every description for sale at this office.

**Legal Notices.****Madrox & Gatley, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**John P. Hirth, Complainant, v. Henrietta C. Hirth et al., Defendants. No. 28,010, Equity.**

Upon consideration of the petition of H. Prescott Gatley, trustee, herein this day filed, it is, this 5th day of November, 1908, by the court, adjudged and ordered that said trustee be, and he is hereby, authorized to sell to William A. Volland lot No. 14 in block No. 15 of Mt. Pleasant and Pleasant Plains, as per plat recorded in Book County No. 18, at page 70, of the office of the surveyor of said District, subject to a covenant to dedicate a strip of land 7½ feet from the rear of said lot, whenever the adjoining owners and the Commissioners of said District agree upon a general plan for alleys in said block, at and for the sum of fifty-three hundred and fifty (\$5350) dollars in cash, subject to a broker's commission of three per cent; the examination of title and conveyancing to be at the purchaser's cost, and rents, insurance, taxes, and water rents to be adjusted to the date of transfer. And that said sale so made shall be finally ratified and confirmed, unless cause to the contrary be shown on or before the 5th day of December, 1908. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said last-mentioned date. By

[Seal] the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-81

**Wilton J. Lambert and Brandenburg & Brandenburg, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Millard F. Dunn et al. v. Helen Dunn et al. Equity No. 28,686.**

On consideration of the report of Wilton J. Lambert and F. Walter Brandenburg, trustees, filed herein upon the 30th day of October, 1908, submitting the offer of Emily Kretschmar for the purchase of the property involved in this proceeding, the same being lot numbered ten (10) in block numbered sixteen (16), as per plat recorded in county book numbered six (6), at pages 103 and 104, of the surveyor's office of the District of Columbia, together with the improvements thereon, for the sum of eighteen hundred and fifty dollars (\$1850), less a commission of three per cent (¾%) to the real estate agent effecting said sale, payments to be made—five hundred dollars (\$500) in cash and the balance payable on or before one year, secured by a first trust upon the property sold, it is, this 30th day of October, 1908, ordered that said offer be accepted and said sale be made and confirmed by the court unless cause to the contrary be shown on or before the 30th day of November, 1908. Provided this order be published once a week for three successive weeks before said last mentioned

[Seal] day in The Washington Law Reporter. By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by R. P. Belew, Asst. Clerk. 45-81

**Stuart McNamara, Attorney**

**Supreme Court of the District of Columbia, Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of Thomas Broderick, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1908. WM. T. FINN: Stuart McNamara, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,789. Administration. [Seal.] 45-81

New corporations can procure from the Law Reporter Printing Company, 518 5th street northwest, Stock Certificates (steel lithograph) with State, corporate title, and all details printed in, perforated, numbered and bound.

**Legal Notices.**

**Darr, Peyser & Curtin, Attorneys**  
**Supreme Court of the District of Columbia, Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary Fogarty, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. CHAS. W. DARR, 705 G St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,878. Administration. [Seal.] 45-81

**I. J. Costigan, Solicitor**

**In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.**  
**Patrick J. Brennan, Marian G. Brennan, His Wife, Margaret B. Hauze, Complainants, v. Agnes B. Brennan O'Brien, Mary Brennan McDermott, Martin J. Brennan, and his Unknown Heirs, Alienees, Devisees, and Assigns, Defendants. Equity No. 28,123.**

The object of this suit is the partition by sale and division of proceeds among those entitled thereto of lot fifteen (15), square eight hundred twenty-nine (829), in the city of Washington, District of Columbia, together with the improvements, rights, privileges, and appurtenances thereto belonging. On motion of the complainants it is this 5th day of November, 1908, ordered that the defendants, Mary Brennan McDermott, Martin J. Brennan, and his unknown heirs, alienees, devisees, and assigns, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

[Seal] The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 45-81

**J. M. Chamberlain and Oscar Luckett, Solicitors**

**In the Supreme Court of the District of Columbia.**  
**Bladen Forrest, Complainant v. James K. Forrest et al., Defendants. Equity No. 28,248.**

Upon consideration of the report of the trustees, filed this day, it is by the court, this 30th day of October, 1908, ordered that the trustees be, and they are hereby, authorized to accept the offer of Clarence F. Donohoe for the purchase of No. 1757 Pennsylvania avenue, N. W., being the west 10.92 feet front by the full depth thereof of lot 8, and the east 14 feet front by the full depth thereof of lot 9, in square 100, containing about 1,746 square feet improved by brick dwelling and stable, in this city and District, for the sum of \$1,000 in cash, less a broker's commission of 3 per cent, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the purchaser, or his assigns. Provided that a copy of this order be published once a week for three weeks

[Seal] in The Washington Law Reporter and The Washington Post before said final ratification. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 45-81

**THIRD INSERTION****Henry W. Sohn, Attorney**

**Supreme Court of the District of Columbia, Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary A. Rodriguez, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. PHILOMENA R. JOYCE, FRANCES C. JOYCE, 1340 Vermont ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,577. Administration. [Seal.] 44-81



**Legal Notices.**

Alex. H. Bell, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Anthony Felder, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 29th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 29th day of October, 1908. ANNA FELDER, 102 1st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,490. Administration. [Seal.] 44-3t

Jos. A. Burkart, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Marie F. Seitz, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of October, 1908. JOS. A. BURKART, Corcoran Building. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,331. Administration. [Seal.] 44-3t

Millan & Smith, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William C. Eldridge, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 26th day of October, 1908. MARY B. ELDRIDGE, 1856 Kenyon st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,574. Administration. [Seal.] 44-3t

Carlisle & Johnson, Solicitors  
In the Supreme Court of the District of Columbia.  
Millard F. Lynch v. James B. Smallwood et al.  
No. 28,026. In Equity.

The object of this suit is to have the title of the complainant to lot numbered six (6), in square numbered seven hundred and twenty-eight (728), in the city of Washington, District of Columbia, perfected by having his title by adverse possession decreed by the court. On motion of the complainant, it is, this 27th day of October, A. D. 1908, ordered that the defendants, James B. Smallwood and Mary H. F. Dobbryn, do cause their several appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, otherwise the case will be proceeded with as in case of default. It is further ordered that a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and

[Seal] In The Washington Herald. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 44-3t

Wm. D. Hoover, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Cuthbert W. Ridley, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 26th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 26th day of October, 1908. NATIONAL SAVINGS AND TRUST CO., by George Howard, Treasurer; J. LOUIS LOOSE, 1340 R st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,566. Administration. [Seal.] 44-3t

**Legal Notices.**

Gordon & Gordon, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Helen Young Shepperd, Deceased.  
No. 15,149. Administration Docket 88.

Application having been made herein for probate of the last will and testament and codicil thereto of said deceased, and for letters testamentary on said estate, by Randolph Clay Murphey and Florence Sarah Hoyt, it is ordered, this 28th day of October, A. D. 1908, that William Patrick, Chester Patrick, and John Young Patrick, and the unknown heirs at law and next of kin of Helen Young Shepperd, and all others concerned, appear in said court on Monday, the 30th day of November, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 44-3t

Wm. E. Edmonston, Attorney.

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth D. Palmer, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscribers, on or before the 27th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of October, 1908. WILLIAM L. ROBINS, 1700 13th st. N. W.; WILLIAM B. PALMER, 606 9th st. N. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,576. Administration. [Seal.] 44-3t

**SEVENTH INSERTION.**

J. J. Darlington and W. C. Sullivan, Solicitors  
In the Supreme Court of the District of Columbia.  
Julia Ten Eyck McBlair et al. v. George F. Green et al.  
No. 27,887. Equity Dec. —.

The object of this suit is to declare complainants' title perfect, by adverse possession, to original lots numbered eight (8) and eleven (11) in square numbered seventy-eight (78), Washington, District of Columbia, as described in the bill. On motion of the complainants, it is, this 28th day of August, A. D. 1908, ordered that the defendants, Mary I. Lewis, Alice Q. Bruce, Rousby Quinsbury, Belle P. Quinsbury, Emma L. Quinsbury, Emma Rose Quinsbury, Eastmon P. Green, Easle C. Gandell, John W. Sykes, Mary Sykes Findley, Daniel P. Wirt, Augusta Wirt Nalle, Forrest Tayloe, and Louisa D. Tayloe, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order, and that the defendants, the unknown heirs, devisees, and allies of Charles Gilchrist, John Hewitt, Uriah Forrest, Rebecca Forrest, George Forrest, Benjamin S. Forrest, Ann Green, Maria Tayloe Bohrer, Maria G. Devereux, Rebecca Ann Green, or Ann Rebecca Green, Elizabeth R. Quinsbury, Alice G. de Yturblide, Osceola C. Green, Nicholas Quinsbury, John Tayloe, 3d, John Tayloe, 4th, Maria Tayloe Sykes, Catherine Tayloe Wirt, and of each of them, cause their appearance to be entered herein on or before the first rule day occurring after three months from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks, for the first month, and twice a month for the two succeeding months [Seal] in The Washington Law Reporter. WENDELL P. STAFFORD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. aug. 28; sept. 4, 11; oct. 2, 9; nov. 6, 13

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WASHINGTON, D. C. - - - - NOVEMBER 20, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

Master and Servant; Safe Place to Work; Expert Testimony; Contributory Negligence.

In *Ball v. United States Express Company*, the action was to recover for the death of plaintiff's intestate, who was killed while employed as an engineer in the garage of the defendant company in this District. The negligence of the defendant was alleged to consist in the improper construction of a brick chimney fifty-three feet high, with a perforated iron stack at the top which stack was closed by a solid iron cap, said chimney being constructed to convey gases escaping from the engine from a pit under the engine room into which such gases were carried by exhaust pipes connected with the engines. The accident causing the death of plaintiff's intestate resulted from an explosion caused by an accumulation of gases in the pit. In the trial court judgment was rendered for the defendant, but this judgment is reversed by the Court of Appeals, in an opinion by Mr. Justice Van Orsdel. The question of whether or not the chimney as constructed was the kind usually employed in connection with the operation of gas engines, such as were used by defendant, and whether its use by defendant was negligence, is held one for the jury to determine. It is also held that error was committed by the

trial court in excluding expert testimony offered by the plaintiff, in rebuttal, to the effect that a certain action of the deceased just prior to the accident, and which was claimed by defendant to constitute contributory negligence on his part, was one proper for an engineer to take. It was claimed by defendant that deceased was familiar with the construction of the chimney and pit and therefore assumed the risk of accident, but the court holds that there being no affirmative evidence tending to show that deceased knew of the improper construction, no presumption of such knowledge by him could be indulged.

### Will Contests; Publication of Notice to Unknown Heirs After Trial of Issues.

In *Lewis v. Luckett* the appeal was from a decree admitting a will to probate after contest. The petition for probate alleged that deceased left no heirs or next of kin except her husband, who was served with process, and who appeared and filed a caveat, upon which issues were framed and trial had resulting in a verdict sustaining the will. Thereafter the Probate Court passed an order requiring notice by publication to the unknown heirs and next of kin of decedent, whereupon the husband moved to vacate the order framing issues and all subsequent proceedings, including the verdict of the jury, on the ground that the court was without jurisdiction because at the time the issues were framed and trial had there had been no publication against unknown heirs. The motion was denied, and this action was affirmed by the Court of Appeals, in an opinion by Mr. Justice Robb, which holds that the failure to publish against unknown heirs and next of kin until after trial of the issues framed on appellant's caveat did not, as against him, affect the conclusiveness of the issues determined by that trial.

### Special Assessments; Exceptions to Verdict; Failure to Summon New Jury.

In *Briscoe v. Macfarland*, the appeal was from a decree of the court below dismissing a bill filed to enjoin a sale of a lot owned by complainant for failure to pay a special assessment for benefits and to vacate said assessment. Complainant's property was assessed in proceedings for the extension of Rhode Island avenue under the act of Congress of March 3, 1899. Exceptions filed by him to the verdict of the jury of seven were overruled, and an appeal taken, but such appeal was subsequently dismissed. The Court of Appeals in an opinion by Mr. Chief Justice Shepard, affirming the decree appealed from, holds that while the court, upon the filing of the exceptions to the verdict of the jury, should have vacated the verdict and ordered a jury of twelve to make a new assessment, the failure to do so did not make its order confirming the verdict void, but voidable merely, and that under the circumstances appellant was concluded thereby.

A similar decision was rendered in the case of *Shea v. Macfarland*.

## Court of Appeals of the District of Columbia

WALTER V. R. BERRY, APPELLANT,

v.

DISTRICT OF COLUMBIA.

**BUILDING REGULATIONS; HEIGHT OF BUILDINGS; POWER OF COMMISSIONERS TO SUSPEND REGULATIONS; DAMAGES FOR REFUSAL OF PERMIT.**

1. The building regulations adopted by the Commissioners of the District of Columbia under the power conferred by Congress are binding, not only on the public, but on the Commissioners also; and the Commissioners have no power to suspend such regulations temporarily or to make a special order exempting any particular person or property from their operation.
2. The Commissioners are not judicial officers invested with power to make interpretations of their regulations upon the petition of parties, but ministerial officers invested with power to make certain general regulations and then to enforce them without favor.
3. Plaintiff, desiring to erect an apartment house 110 feet in height at the intersection of two resident streets, applied to the Commissioners for an opinion as to whether the provisions of section 40 of the building regulations, limiting the height of buildings on resident streets to ninety feet applied to the property in question, and were advised by the Commissioners that he would be allowed to erect a building of the height desired on the proposed site. Plaintiff, thereupon, had plans prepared by an architect, organized a corporation, and made contracts with materialmen, expending a large sum in such preparations. On applying for a permit it was refused by the inspector of buildings on the ground that under the regulations no building higher than ninety feet could be erected on the proposed site, and his refusal was approved by the Commissioners. Plaintiff's project to erect the building thereupon fell through, and he brought suit against the District to recover damages incurred by reason of the refusal of the permit. *Held*, that the action of the Commissioners in giving their approval to the erection of a building 110 feet high on the site proposed, in violation of the building regulations, was without authority and plaintiff assumed the risk in incurring expenses on the faith of it, and that the subsequent refusal of the permit to erect a building 110 feet in height in violation of the regulation gave plaintiff no right of action against the District.

No. 1925. Decided November 4, 1898.

APPEAL by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 44,777, entered upon an agreed statement of facts in an action to recover damages for refusal of permit to erect a building. Affirmed.

Mr. BENJ. S. MINOR for the appellant.

Mr. E. H. THOMAS and Mr. H. P. BLAIR for the appellee.

Mr. Justice ROBB delivered the opinion of the Court:

This action was brought by Walter V. R. Berry against the District of Columbia to recover damages incurred by him through the refusal of the defendant to permit him to proceed with the erection of an apartment house, of the proposed height of 110 feet, on a lot owned by him at the corner of Seventeenth and I streets N. W., in the city of Washington.

A jury was waived and the cause submitted to the court, upon an agreed statement of facts, who entered judgment for the defendant, and the plaintiff has appealed therefrom.

The material facts contained in the agreed statement are:

In 1898, plaintiff owned the property situated at the corner of Seventeenth and I streets, both "residence" streets. The frontage on Seventeenth

street is 170 feet, on I street 78 feet. The lot contains 9,460 square feet and cost plaintiff the sum of \$69,200. It appears from the plat referred to, which corresponds with the city map, that opposite the lot on Seventeenth street lies Farragut Square, a public park reservation. Connecticut avenue is broken by this square, and commences again at the south side thereof. Both streets on the east and west side of the square are designated as Seventeenth street, and are of the regular width of 90 feet. The one on the east terminates at the south side of I street where Connecticut avenue again resumes its course. On the west side on which plaintiff's property abuts it continues its course south through the city. I street is substantially the same width as Seventeenth street at plaintiff's corner.

Under the authority conferred by an act of Congress the Commissioners, on July 31, 1897, promulgated certain building regulations governing the "construction, erection, maintenance and removal of all buildings and their appurtenances in the District of Columbia." These regulations charged the inspector of buildings with the enforcement of the same, under the supervision of the Commissioners. He was required to sign and issue all permits, etc., keep on file all applications, etc., and make an annual report to the Commissioners. All applications shall be made in writing to the owner or his agent, and shall state clearly and fully the work contemplated to be done, on forms to be prepared and issued by the inspector. In all cases drawings and specifications, so as to enable the inspector to obtain full information as to the character and extent of the work, shall be submitted to him. Section 40 of said regulations was as follows:

"No building shall be erected or altered on any street in the District of Columbia to exceed in height above the sidewalk the width of the street in its front; and in no case shall a building exceed ninety feet in height on a resident street, nor one hundred and ten feet on a business street, as defined in these regulations, except on avenues one hundred and sixty feet wide, where a height not exceeding one hundred and thirty feet may be allowed when the lot is of sufficient frontage and depth, in the judgment of the Commissioners, to justify the same. Provided, that the height of buildings on corner lots, in all cases, shall be regulated by the limitations governing on the broader street."

On March 17, 1898, plaintiff addressed a letter to the Commissioners stating his intention to erect a handsome apartment house on his property. This letter contains the following paragraphs:

"In examining the building regulations we find that the height of buildings is limited by the width of the broadest street upon which the property abuts and that, in this case, the distance between the building lines on the east and west sides of Seventeenth street is about 275 feet.

"We presume that it would hardly be reasonable to expect that a building of this height will be permitted, at the same time the conditions surrounding this locality are so different from those generally encountered, that the prescribed limit of 90 feet would seem, in our opinion, to be applicable only in cases where building lines are established on both sides of the street.

"The speedy settlement of this point is of the utmost importance to us and in order to enable

us to proceed with our plans we desire to be granted the privilege of conferring with you at the earliest possible day.

"We enclose herewith a photograph of the proposed structure, which will furnish you with some idea of its character."

No answer having been received to this letter, plaintiff wrote again on March 24, 1908. This repeats the former statement as to the width 375 feet between building lines, and adds:

"We are informed by Mr. Brady, inspector of buildings, that the question of the height of buildings fronting on squares has never been determined.

"We propose to put up a building that will be a great ornament and credit to the neighborhood and to the city, and one that will be, architecturally and practically, the most beautiful that money can make. We find, however, that it will be impossible to place it upon a paying basis, unless we are allowed to erect it to a height of say one hundred and ten feet, such height to be figured to the top line of the cornice and not to include any kind of sloping roof. The speedy settlement of this point, as previously stated, is of vital importance to us and we request that the matter be passed upon as soon as possible."

On March 31, 1898, plaintiff received a communication containing the following extract from the minutes of the Commissioners: "In the matter of the proposed erection at the northwest corner of 17th and I streets, N. W., of an apartment house, Commissioner Ross submitted the following memorandum in which Commissioner Black concurred:

"Section 4 of the building regulations of the District of Columbia in regard to the height of buildings provides for an exception where a height exceeding 130 feet may be allowed on avenues 160 feet wide. In view of the fact that the space in front of this proposed structure is over 300 feet wide, there is no question in my mind that the spirit of the regulation, and indeed its letter, allows the erection of said building on the corner of 17th and I streets, N. W., of the height proposed in the application."

This was followed by a letter to plaintiff of April 1, 1898, signed by Edward Bur, Capt. Corps of Engineers, as follows:

"Dear Sir: Referring to your letters of the 17th and 24th ultimo, with regard to the erection of an apartment house corner of 17th and I streets, N. W., facing Farragut Square, I have to advise you that the Commissioners have decided that, in view of the fact that the space in front of the proposed building is over 300 feet wide, you will be allowed to construct proposed building to the height desired—that is, 110 feet."

Upon receipt of the foregoing, plaintiff proceeded with his preparations, and engaged an architect to prepare plans for a modern apartment house to cost \$500,000. Work was carried on day and night on said plans so that construction might be begun in June, so as to have the house completed by the autumn of 1899. While plans were being prepared, plaintiff proceeded with his arrangements. He organized a corporation under the laws of West Virginia called the Farragut Building Company, for the purpose of erecting the building, all of the shares of which, save four (the nominal number required by the laws of West Virginia for the qualification of directors)

were owned by plaintiff. Plaintiff visited many cities and induced materialmen and others to enter into building contracts, and to take stock of said corporation in part payment. After much labor his efforts were successful, so that when the plans were completed, about the middle of May, 1898, he was ready to proceed with his construction. As president of the said corporation, on May 24, 1898, plaintiff filed the completed plans with the inspector of buildings and made formal application for the permit to build. These showed the proposed height of the building to be 110 feet from sidewalk to the highest point of the roof. Prior to June 13, 1898, plaintiff was informed that a permit could not be issued for a building more than ninety feet in height, and on July 5, 1898, he received a formal letter from the secretary of the Commissioners informing him that his application had been denied.

"By reason of the refusal to allow the erection of said apartment house to a height of more than 90 feet, the plaintiff's backers, who had agreed to furnish the necessary funds, as well as the materialmen, who had agreed to take stock in part payment for their material, on condition that the building could be erected to a height of 110 feet, declined and refused to proceed further.

"Thereafter, the plaintiff, for the purpose of trying to interest other persons to unite with him in the erection of an apartment house of the height of only 90 feet, caused an application to be filed by the Farragut Building Company with the building inspector for a permit to erect an apartment house on said property to the height of 90 feet, and thereafter a permit for the erection of an apartment to the height of 90 feet was duly issued to said Farragut Building Company on the 8th day of October, 1898; but the plaintiff was unable, after repeated efforts, to interest other persons to unite with him in the erection of an apartment house to the height of only 90 feet and was, therefore, compelled on or about August 8, 1900, to abandon his efforts to erect an apartment house on said property. The charter of said company subsequently lapsed through non-user.

"By reason of the foregoing the plaintiff suffered great damage and lost the large sums of money which he had expended in his preparation for the erection of said apartment, to wit:

Paid architect for services in connection with drawing plans for apartment house.....	\$2,500 00
Paid traveling and other expenses of architect.....	200 00
Paid personal and traveling expenses in connection with procuring contracts with contractors and materialmen for the erection of said building, at least the sum of.....	500 00
To time and services of plaintiff in connection with procuring contract with contractors and materialmen, etc., at least the sum of.....	1,200 00
Paid for charter, etc., for Farragut Building Co.....	250 00
	<hr/>
	\$4,650 00

As to these items it is agreed that the amount of each is correctly stated and, if the defendant be liable in this cause, such sums as the court may

find to be proper elements of damage may be allowed in the finding of the court."

1. As shown by the agreed statement of facts, both Seventeenth and I streets, on which plaintiff's corner lot abutted, are "resident" streets. Hence by the plain terms of section 40 of the regulations, any building thereon was limited in height to ninety feet, whether or not one of those streets might have been wider than ninety feet. As a matter of fact Seventeenth street, in front of plaintiff's lot, is not wider than ninety feet. According to the adopted plan of the city of Washington the streets designated by letters of the alphabet run east and west; the numbered streets from north to south. Occasionally broad avenues cross the city diagonally. Many squares are reserved for public parks and are the property of the United States. Some of these occupy spaces which would be partly contained in streets and avenues, had not the same been suspended at one boundary of the square to be continued from the opposite boundary. Farragut Square is one of these reservations. As the plan shows, Connecticut avenue, instead of traversing Farragut Square from southeast to northwest, was suspended at one boundary of the square and continued from the opposite one. The reservation of these squares for parks, and the general course of particular avenues and streets leading to them, prompted, if they did not necessitate, the occasional shifting of a regular street, in its prolongation, to the extent of the square. Had Connecticut avenue been laid out across Farragut Square there would have been left a small triangular space between it and the street opposite plaintiff's lot. The city map shows Seventeenth street extending south on the east side of Farragut Square, and terminating, on that line, in Connecticut avenue which began again at the south boundary of the square. Proceeding from the south boundary of the city, north, Seventeenth street was projected along the west side of the square and into Connecticut avenue on the north boundary of the same. These two street ends, as they may be called, on their respective sides of Farragut Square, are separate and distinct streets, though called by the same name. There is no ground for the contention that Seventeenth street is to be regarded, in the sense of the building regulations or in any other, as embracing the square lying between its two ends described as aforesaid. They are shown on the map, and have been laid out and improved, as not exceeding a width of ninety feet, respectively. Clearly the proposition to erect a house higher than ninety feet, at the corner of Seventeenth and I streets, was prohibited by the regulations.

2. It remains to consider whether the action of the Commissioners, upon plaintiff's letters of March 17 and 24, 1908, amounted to a license to erect a building more than ninety feet in height at the corner of two "resident" streets, the subsequent revocation or denial of which entitled him to damages for the loss incurred. We are of the opinion that it did not amount to such a license.

The Commissioners were empowered by Congress to make and promulgate general regulations governing the matter of building in the District of Columbia. Such regulations, when promulgated, had the force of laws binding not only the public, but the Commissioners also. They could amend or repeal by another general order, but they were invested with no power to suspend the same tem-

porarily, or to make special orders exempting any particular person or property from their operation. They could give no special license in conflict with the provisions of the law. *Brown v. District of Columbia*, 29 App. D. C., 273, 285; 35 Wash. Law Rep., 162. The regulations provided that all applications for permission to build should be submitted, in the first instance, to the inspector of buildings, an officer created for that purpose, together with the plans and specifications, just such an application as plaintiff afterwards made when his plans and specifications had been completed.

What the Commissioners were asked to do in the letters aforesaid, was to interpret section 40, in advance, so that plaintiff might make his financial arrangements before deciding upon his building plans. As we have seen the section is too plain to require interpretation. The action taken by the Commissioners was a palpable misconstruction, and amounted to nothing more than a virtual suspension of the regulation by way of excepting plaintiff's property from its operation. They are not judicial officers invested with the power to make interpretations of their regulations, upon the petition of parties, but ministerial officers invested with the power to make certain general regulations, and then to enforce them without favor. Their action being without authority the plaintiff assumed the risk of incurring expenses on the faith of it.

When his plans were ready, he submitted them to the inspector of buildings, who refused the permit because the proposed building was in violation of the regulation. As he was under the supervision of the Commissioners, an appeal was made to them to reverse his action and order the permit to issue. Then, for the first time regularly and legally, they were called upon to determine whether the proposed building, described in the plans and specifications, was within the prohibition of the regulations. They then arrived at a correct conclusion upon the conditions presented by the application, and approved the action of the inspector.

The court below was right in holding that there was no foundation for the action brought, and the judgment will be affirmed with costs.

Affirmed.

**Carriers.**—A street railway company is held, in *Riley v. Rhode Island Co.* (R. I.), 69 Atl., 338, 15 L. R. A. (N. S.), 523, not to be liable for injuries to a passenger who slips upon snow and ice accumulated during a storm upon a step after the car has started upon a trip.

The rules and practice of an express company to refuse to receive packages of specie and currency for transportation from a bank which had a burglar-proof vault and adequate facilities in the city where the packages were tendered to keep them safely over night, on the day preceding departure of the only trains which carried express matter to the destinations of the packages, and which left at various times between 6.29 and 8 in the morning, are held, in *Platt v. Lecocq* (C. C. A.), 158 Fed., 723, 15 L. R. A. (N. S.), 558, not to be unreasonable, unlawful or unjust.

**Railroads.**—The signal of a flagman to cross is held, in *Union P. R. Co. v. Rosewater* (C. C. A.), 157 Fed., 168, 15 L. R. A. (N. S.), 803, not to relieve one from the duty to look and listen before driving upon a crossing.

## Court of Appeals of the District of Columbia

JOSEPH T. FERRY ET AL., TRUSTEES, APPELLANTS,

v.

GEORGE HENDERSON.

### EVIDENCE; VALUE OF SERVICES OF BUILDING SUPERINTENDENT.

1. In an action to recover compensation for services rendered in superintending the construction of a building where it appeared that plaintiff was not a regular superintendent of building construction, but was engaged in the particular case while regularly performing clerical duties for another, and gave but a small part of his time each day to the matter of superintending such construction, evidence as to the salary he received for such clerical services is competent for consideration by the jury in determining the value of his services in superintending the construction of the building, and its exclusion is reversible error.
2. Such evidence being clearly relevant, an assignment of error based upon its exclusion considered, although the specific grounds of its competency were not assigned by the party offering it.
3. Testimony of a competent person is admissible on the subject of values of property, professional or personal services, and the like, where the same is the subject of controversy. Held, therefore, where there was testimony from an expert builder as to the compensation usually paid a building superintendent, that it was error to exclude questions as to how much time a building superintendent should spend on the building in order to earn full compensation, and as to what would be reasonable compensation for a superintendent of building who should spend only from a half hour to an hour a day thereon.

No. 1889. Decided November 4, 1908.

APPEAL by defendants from a judgment of the Supreme Court of the District of Columbia, at Law, No. 49,672, entered upon the verdict of a jury in an action to recover for services in superintending the construction of a building. Reversed.

Mr. GEO. F. WILLIAMS and Mr. A. A. BIRNEY for the appellants.

Mr. CHARLES POE for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was brought by George Henderson against Joseph T. Ferry and J. Frank Ferry to recover the sum of \$1,400 on account of services rendered by him in superintending the construction of a house for them, and money expended for them therein. The house was alleged to have cost \$20,000, and the claim was for 10 per cent thereof, less a credit allowed of \$600 for the services of the architect. Defendants denied making a promise as alleged, and any indebtedness on account of the said services.

Plaintiff's evidence tended to show that he superintended the construction of the building, at the request of defendants. That it cost \$20,000 and the construction consumed about six months. That he visited the building every day, and sometimes two or three times a day. That he was usually there when the men commenced work about 7.30 in the morning. That he got the pay roll from the foreman and paid the workmen with money furnished by defendants. That he procured releases of all claims for work and materials, of which there had been about twenty. That he arranged a difficulty about a party wall, paying an attorney engaged \$100 of his own

money. That his services were worth 10 per cent of the cost of the building, but as the architect had a contract for \$600, he had allowed the same as credit on his claim.

Upon cross-examination he said that during the whole period he had been a clerk for R. E. Bradley, a real estate agent, and was paid a salary for conducting his rental business. That he usually gave the hours from 9 a. m. until 5 p. m. to Bradley's service. Plaintiff was asked what salary he was paid by Bradley for his services. His counsel objected, without stating any ground of objection, nor did the defendants indicate the purpose of the evidence in reserving an exception to the refusal of the court to permit witness to answer. That he had no technical knowledge of building or architecture, and had never before superintended an entire building, but had considerable to do with repairs to buildings. That defendants were trustees for a number of buildings the rents of which Bradley collected for them. Part of the expenditures on the building was paid out of these rents and charged in accounts rendered; the remainder furnished by defendants on request. The foreman was paid \$1 per day extra, but not as superintendent. The architect visited the building, but how often plaintiff did not know. That all material was ordered through witness on request of the foreman. That about \$400 monthly passed through Bradley's hands as rents collected for defendants.

Nicholas T. Haller, an architect, testified that ten per cent was the usual and fair compensation for superintendence, and that a superintendent need not be experienced in building, or remain practically all the time upon the building, but needed only to understand the plans and specifications; and that part of his duty would be to order materials.

Defendants' evidence tended to show that plaintiff had not been employed to superintend the construction of the building. That there was no usage or custom to pay building superintendents a commission, but by the day only. That the plaintiff did not exercise any authority over the building. That overlooking of the carpenters was done by the foreman, and the work of superintendence by the architect who visited the premises daily, and sometimes twice a day.

Defendants called Joseph Richardson, who qualified as an expert builder, who said that the usual compensation of building superintendents is \$6 per day. He was asked (1) "What are the qualifications of a man in that work entitled to \$6 per day?" (2) "To earn \$6 per day, or to be entitled to that in the building trade how much time should the superintendent spend on the building?" (3) (After having testified that the duties of a superintendent are to see that the work is properly carried on and plans and specifications adhered to): "To do that properly, how much time of the superintendent would be necessary?" (4) "What in your opinion would be the reasonable compensation of a man as superintendent of a building who should spend half an hour to an hour a day on the building?" These questions were objected to, no ground thereof being stated; nor did the defendants state what they expected the answers to be. The witness was not permitted to answer, and defendants excepted. Thomas F. Holden, also called by defendants, testified to long experience as a superin-



tendent of building construction; that as a rule superintendents are paid by the day, at a rate of \$5 per day for buildings of the kind in question; that they do no manual labor, but direct the mechanics as to how work should be done. He was then asked: (1) "What qualifications are necessary for such superintendents?" (2) "Assuming that a man, in superintending as you have indicated, was not required, on account of the job not being a very large job, to give his whole time to the superintendence, but only to come in the mornings for a short time, and then again in the evening for a short time, and not always in the evening, and occasionally at some time during the day, but did not stay there all the time—would he be entitled to the full pay of a superintendent, five dollars a day?"

Plaintiff objected to each question as before, and the same were sustained with exceptions noted.

The defendants excepted to the following special instruction given to the jury at plaintiff's request: "If you believe the defendants requested the plaintiff to do the work referred to in the evidence, then the burden of proof is upon the defendants to show that the plaintiff agreed to do such work without being paid therefor."

No exception was taken to any other part of the charge. The jury returned a verdict for plaintiff for \$900; and from the judgment thereon defendants have appealed.

It appears generally that the building was completed according to the plans and specifications, and that the construction was satisfactory to the defendants.

The question was not, then, as to the particular qualifications of the plaintiff or the duties of a superintendent of construction, but as to the reasonable value of his services. As the plaintiff was not a regular superintendent of building construction, but was engaged in the particular case while regularly performing his clerical duties for another, which occupied the bulk of every day that the construction was under way, and gave but a small part of his time each day to the matter of superintendence, it seems to us material that the jury should be informed as to the salary he was receiving for his regular duties. Evidence on plaintiff's behalf tended to show that it was customary to pay a superintendent a percentage of the cost of the building. On the other hand, testimony tended to show that such services when daily performed were generally paid for by the day at a price ranging from \$5 to \$8. The jury did not allow the whole of the claim based on the percentage rate, but considerably less. They were not bound to accept the estimate of value fixed by witnesses, but had the right, which they evidently exercised, of determining the weight and force of all the evidence by their own general knowledge of the subject of inquiry. *Head v. Hargrove*, 105 U. S., 45, 49. Estimating the six months of construction at 180 days, the verdict for \$900 may have been arrived at by allowing plaintiff \$5 per day, without adding thereto the \$100 which he paid to attorney, or the \$50 of incidental expenses. While the jury were not bound to estimate the value of the services per day or per month by the salary received by plaintiff, yet, as defendants knew that he was performing services for them, in addition to his regular employment by Bradley, who was their collecting agent, it was competent evidence

for the consideration of the jury in determining the amount of their liability for his services. It is to be remembered that plaintiff did not claim to have any special qualifications as a building inspector. He did not pursue that occupation and had no knowledge, from experience, of the value of an inspector's services. His regular occupation was clerical, and the value of his time as a clerk, was determined by his salary. Moreover, the architect was paid, to his knowledge, \$600 for similar services of superintendence during the same period, and this he thought fair to allow as a credit upon his own demand. Strange to say, the architect was not called as a witness by either party.

Plaintiff, who failed to assign any particular ground of objection to the competency or relevancy of the evidence sought to be elicited, now contends that it was the duty of the defendants to point out specifically not only what were the grounds upon which they claimed the competency of this evidence, but also to state what they expected to prove by the witnesses. It is true that where evidence is generally incompetent or irrelevant it is the duty of the party seeking to introduce it to state special grounds constituting it an exception to the general rule, so that the court may be fully informed in regard to the question which he is called upon to decide as well as that opposing counsel may not be taken by surprise. This is not the case here, however. Plaintiff had testified to the other employment, and, of course, knew the amount of his salary. The relevancy of the question did not depend upon the amount of that salary, but its force and effect only as bearing on the question of the value of his services, which was for the jury to consider.

Under the circumstances of the case, we think that the exception may be considered, and that the evidence was competent. The conditions are quite different from those of the cases relied on by plaintiff. *De Forrest v. H. S.*, 11 App. D. C., 453, 460; 26 Wash. Law Rep., 346; *Turner v. Am. Sec. & T. Co.*, 29 App. D. C., 460, 468; 35 Wash. Law Rep., 302. In the first of those cases, the party assigning error upon the admission of the testimony, stated no ground of his objection. It was said that specific grounds of objection are required so that they may appear on the record, and in order that the other party may have an opportunity to obviate them. Moreover it was said: "Nor are we at all certain from the circumstances of the record that the testimony here in question was absolutely inadmissible." See, also, *Washington Gas Light Co. v. Poore*, 3 App. D. C., 127, 135; 22 Wash. Law Rep., 249. In *Turner v. Am. Sec. & T. Co.*, supra, the trial court refused the offer of a witness to prove his opinion in respect of the competency of a testator. The introducer, failed however, to state what the opinion was that he wished an opportunity to introduce. Under the circumstances of that case it was held that it was the duty of the party to show what was that opinion so that the appellate court might be able to determine whether the exclusion was in fact prejudicial.

The application of this strict rule necessarily depends upon the apparent character of the evidence and the circumstances of the case. When incompetency and irrelevancy are clear and apparently insurmountable, it may not be necessary always to state the objections specifically. Nor where the competency or relevancy are alike plain, from all

the circumstances, is it necessary to assign specific grounds of admissibility.

For substantially the same reasons, above given, we are of the opinion that there was error in sustaining objections to two of the questions propounded to the witness Richardson. These were: 1. To earn the full compensation of a building superintendent how much time should he spend on the building? 2. What, in your opinion, would be the reasonable compensation of a superintendent of a building who should spend from half an hour to one hour a day upon a building? Testimony of a competent person, as this witness had shown himself to be, is admissible on the subject of values of property, professional or personal services, and the like, where the same is the subject-matter of controversy. The matter to be determined here was the value of plaintiff's services during a certain period. Two grounds of estimating the same were before the jury, namely, the percentage and the per diem basis. It was for the jury to adopt either, and the amount of the verdict would seem to indicate the adoption of the latter. While they were not bound to adopt the testimony of a witness familiar with the necessary character, and the value of such services, nevertheless the party was entitled to have it submitted to them as proper aid to the fair and intelligent consideration of the point at issue.

It was not error to refuse to permit evidence as to the necessary qualifications of a building superintendent. There was no question of competency or incompetency in the case. The work had been completed to the satisfaction of the defendants, whether due to the services of the plaintiff or not. If they were satisfied to permit him to act as superintendent, and had no complaint to make of incompetency, they could not be heard to urge his want of qualification as a ground for refusing to pay for his services.

The form of the second question to the witness Holden was objectionable. It should have been in the form of the one to Richardson, as to the reasonable value of such services as had been rendered by the plaintiff.

We see no objection to the special instruction excepted to.

For the reasons assigned the judgment will be reversed with costs, and the case remanded for a new trial.

Reversed.

**Adverse Possession.**—Merely squatting on real estate without notice to the true owner, although the squatter makes pretense of holding adversely, is held, in *Jasperson v. Scharnikow* (C. C. A.), 150 Fed., 571, 15 L. R. A. (N. S.), 1178, to constitute no foundation for the acquisition of title by adverse possession. The authorities upon the necessity of color of title, when not expressly made a condition by statute, to found title by adverse possession, are collected in a note to this case.

**Attorneys.**—That an attorney employed by a minority stockholder to conduct a stockholders' action for the benefit of a corporation which has itself refused to sue is entitled only to a reasonable compensation out of the fund recovered, and not a contingent fee agreed upon, is held, in *Graham v. Dubuque Specialty Mach. Works* (Iowa), 114 N. W., 619, 15 L. R. A. (N. S.), 729.

## Court of Appeals of the District of Columbia

LUCIEN D. WINSTON, APPELLANT,

v.

THE ARLINGTON FIRE INSURANCE COMPANY.

**FIRE INSURANCE; ELECTION OF INSURER TO REPAIR; ACTION FOR FAILURE TO REPAIR PROPERLY; LIMITATIONS IN POLICY.**

1. Where a policy of fire insurance gives to the insurer an option to repair and replace the building, the exercise of this option by the insurer and its election to repair the building converts the original contract between the parties into a new one on the part of the insurer to repair the building and restore it to its former condition.
2. And in such case, where the work of repairing the building is defectively done, an action to recover damages for such defects is not based upon the contract of insurance, so as to bring it within a provision of the policy requiring any action thereon to be brought within a certain period after the loss, but is based upon the failure of the insurer to perform the new contract created by its election to repair, and such limitation clause in the policy has no application.

No. 1878. Decided November 4, 1908.

**APPEAL** by plaintiff from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,035, entered upon demurrer to defendant's plea in an action on a contract of insurance. Reversed.

Mr. D. S. MACKALL for the appellant.

Mr. WM. G. JOHNSON for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This action was begun by Lucien D. Winston against the Arlington Fire Insurance Company of the District of Columbia, on December 12, 1907. The declaration alleged that on and before June 8, 1901, plaintiff was the owner of a certain house in the city of Washington, that was then damaged by fire. That said house was then under insurance by the defendant against loss by fire. That by the terms of said contract of insurance, the defendant had the right to pay the amount of the ascertained loss, or at its option to repair, rebuild or replace the said house within a reasonable time after said fire. That in pursuance of said contract, and in consideration thereof, the defendant elected, and undertook to repair and reconstruct said house, including the replacing of a metal roof thereon, which had been damaged by fire, with one of like kind and quality. That disregarding its obligation, undertaking and duty, it failed to repair and replace said roof with another of like quality, but replaced and reconstructed the same with material of an unlike, insufficient and inferior quality. That by reason thereof the said roof became more and more defective and insufficient, until to wit, April 1, 1907, when it became necessary, to render said building inhabitable, to put an entirely new roof thereon. That defendant, though requested so to do, failed and refused, and plaintiff was compelled to put on the new roof at a cost of \$382.50, wherefore he has sustained damages to the amount of \$500.

The defendant entered three pleas to the declaration: 1. That the defendant never undertook and promised as alleged. 2. That the cause of action did not accrue within three years next before

bringing suit. 3. That in the said contract of insurance it was stipulated that no suit or action on said contract shall be sustainable in any court of law or equity, unless commenced within twelve months next after the fire doing damage to the property insured; and that the plaintiff did not bring his action within twelve months next after said fire, wherefore he is barred and forever estopped from bringing this action.

Plaintiff demurred to the third plea. The demurrer was overruled, and plaintiff electing to stand upon his demurrer, judgment was rendered for the defendant. This appeal is prosecuted therefrom.

The single question for determination is whether this is an action on the contract of insurance so as to bring it within the operation of the limitation clause set out in the plea. The contract of insurance bound the defendant to pay the loss or damage occasioned by fire, not to exceed the stipulated amount. But it reserved an option to the defendant to repair and replace the building. By the exercise of this option, and election, in which the plaintiff was bound to acquiesce, the original contract of the parties was converted into a new one on the part of the defendant to repair the building and restore it to its former condition. The contract to pay the loss was thus superseded by the contract to repair. Plaintiff no longer had a right of action upon the former; his sole remedy was upon the new contract. *Wynkoop v. Niagara Ins. Co.*, 91 N. Y., 478, 582; *Heilman v. Westchester Ins. Co.*, 75 N. Y., 7, 9; *Morrell v. Irving Ins. Co.*, 33 N. Y., 429, 437; *Beals v. Home Ins. Co.*, 36 N. Y., 522, 526; *Fire Association v. Rosenthal*, 108 Pa. St., 474, 478; *Hartford Fire Ins. Co. v. Peebles Hotel Co. (C. C. A.)*, 82 Fed. Rep., 546, 548. Plaintiff's declaration set out the contract for insurance with the stipulation therein for the option to contract to repair, and alleged the election so to do; but this was by way of inducement to the statement of the cause of action, which is the failure to perform the new undertaking created by that election. As the action, then, is not upon the contract of insurance, we think that the limitation clause of that contract can not be made to apply to the action upon the undertaking to repair by which it was superseded.

There is no difference in principle between an action of this kind and one to recover the amount of the adjusted loss or damage under an insurance contract, to which, it has been held, the limitation clause of the policy does not apply. *Smith v. Glen Falls Ins. Co.*, 62 N. Y., 85, 86; *Ill. Mut. Fire Ins. Co. v. Archdeacon*, 82 Ill., 236, 239.

We are of the opinion that it was error to overrule the plaintiff's demurrer to the plea. The judgment will therefore be reversed with costs, and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

**Building Regulations.**—A permit for a building, issued under a misconception of the facts in contravention of the building regulations of the city, is held, in *O'Bryan v. Highland Apartment Co. (Ky.)*, 108 S. W., 257, 15 L. R. A. (N. S.), 419, to be revocable, even after building operations have begun.

## Supreme Court of the District of Columbia

CHARLES A. RICHARDSON ET AL.

v.

WILLIAM MUSHAKE.

### EASEMENTS; EQUITY; INJUNCTION.

1. The owner of a lot subdivided it and built six houses thereon, and at the time a ten-foot strip in the rear of the lots was reserved as an alleyway for the benefit of the occupants of the said houses, though there was no formal dedication of said strip to the United States or the District of Columbia. Thereafter the purchasers of said houses made use of said alleyway, whose only opening was at the southerly end thereof, and continued in such use for more than fifteen years. Subsequently, defendant purchased the southerly lot and declared his purpose to build on the land embraced in said alley. *Held*, that by the dedication of said strip as an alley by the original owner of said land and its use by the several purchasers of the lots for a period of more than fifteen years, the right of the purchasers to such use became incontestable; and an injunction granted to prevent defendant from building on the part of his lot embraced in said alley.
2. No right to close the alley back of his lot and thus prevent the same from being used by the owners of the other lots was acquired by defendant by the fact that, prior to the time of his purchase, the owners of the lots at the northerly end of said alley had, presumably with the consent of the other owners, erected a shed and covered over the north end of said alleyway.

No. 26,432, Equity. Decided November, 1908.

HEARING on a bill in Equity for an injunction. Decree for complainant.

Mr. W. E. AMBROSE and Mr. D. C. STUTLER for the complainants.

Messrs. WOLF & ROSENBERG for the defendant.

Mr. Justice BARNARD delivered the opinion of the Court:

The bill in this case seeks to enjoin the defendant from closing an alleyway, which is described in the bill as being ten feet wide, and as having been, by agreement among the original owners, reserved and kept open at the rear of their respective lots for alley purposes, and as a means of ingress and egress for the owners of lots embraced in the original lot known as "George W. Duvall," in a tract of land called Chichester, in Anacostia, District of Columbia.

The original lot known as "George W. Duvall," was 100 feet deep, and fronted on Monroe street, and the strip alleged to have been dedicated for alley purposes extended parallel with Monroe street at the rear end of said lot.

It is alleged that the said alley has been used by the different owners for the purposes of ingress and egress for over a period of sixteen years, and that it accommodates the owners of the six lots into which the original lot was subdivided, and on which buildings were erected.

It is averred that the defendant is the owner of the corner lot facing on Johnson street, into which the said alleyway opens, and that he has given notice that he proposed to close the alleyway back of his lot, and thus prevent the complainants from having access to the rear of their respective properties by way of said alley, and they aver that if he is allowed to close said alley it will do them irreparable injury.

The answer of the defendant denies that there was any agreement on the part of himself, or his grantors, setting apart the said strip of ground as

an alleyway; and he claims that the strip of ground back of his lot belongs to him, having been purchased from Richard A. Pyles, and that he has the sole and exclusive right to the same and should have the privilege of building thereon.

He denies that it is necessary to keep said alleyway open for the purposes of ingress and egress, and for hygienic purposes.

The defendant further states and claims, in his answer, that he has the same right to build upon his said property as the complainants Jordan, Richardson, and Pyles, had to build upon their lots, averring that the said complainants own the lots at the farther end of said alley, and had built structures thereon more than six years before, and that the structures were occupied as a place for stabling horses and storing wagons. That such act by the complainants is an abandonment of their right to any alleged easement in the balance of said ten-foot strip.

He further states that he acquired his lot by deed, from Richard A. Pyles, and wife, dated March 3, 1906, by which he acquired the title running back 100 feet, and including the ten feet in question; and he claims that the said ten feet is neither a private nor a public alley. No part of the same was ever dedicated to the District of Columbia, or the United States; and that he is required to pay taxes thereon; and that the other owners of the six properties in this square, and their grantors, have all paid taxes thereon since they owned the said land.

The bill was filed July 26, 1906, and a rule to show cause was issued on the same day, to which the defendant filed an answer; and the matter was heard before Mr. Justice Stafford, on August 28, 1906, and a restraining order granted pendente lite.

Thereupon testimony was taken, and the case calendared for hearing.

It appears from the testimony that the lot in question, known by the name of "George W. Duvall," was owned by Richard A. Pyles, and that he divided it into six lots, and built six houses on it, leaving a strip nine or ten feet wide in the rear of the houses, which all fronted on Monroe street, to be used by himself and grantees for the benefit and accommodation of the said several houses; and that he afterwards sold to his brother, George F. Pyles, the three northerly houses and lots.

It is further shown by the testimony that the said strip was actually marked out and used for the purposes of an alley, sheds and fences being built between that strip and the lots, on some of the subdivided lots, and an entrance effected into the alley by way of gates or doors.

It is also shown that the three northerly lots farthest from Johnson street, have been improved by a shed being built on a part of the one farthest north and a stable, roofing over and covering in the said strip, back of the second lot, and a portion of the third lot from the northerly side, although it appears that the alleyway is still left open at the southerly end of such enclosure, or stable, so that the occupants of all the six lots still have egress and ingress through the said alleyway to reach the rear of their premises, although going part of the way through this covered stable.

There seems to be no dispute but what there is, at the extreme northeasterly corner, a shed which does shut off a part of the ten-foot strip from the remaining portion of the most northerly lot, but

which does not cover the entire width of the lot; and it is claimed further that the said covered alleyway in rear of the three most northerly lots, or the larger part thereof, is also used and occupied for the storage of a patrol wagon, kept by the District for use by the Police Department, there being a police station on the front part of the said most northerly lot.

The defendant in this case purchased the most southerly lot, facing on Johnson street and Monroe street, several years after the northerly lots were occupied by the stable and shed, which it is claimed by him have interfered with the scheme of the original owner in having the said strip for the benefit of all the six lots.

In his deed nothing is said about the right of way over the said strip; but it is clearly shown that at the time of his purchase it was in actual use by the occupants of the other lots north of his lot; and whatever rights the owners of the other lots had to the use of the said strip, could have been ascertained by him from an inspection of the premises, and by inquiry of the occupants of the said lots. They were in possession, or actual use, of the alleyway, covered as it was by the roof of the stable or shed, at the northerly end, at the time the defendant bought and entered into possession of his lot.

The testimony also shows that the houses fronting on Monroe street on these several lots were built, and the alleyway actually marked out, and in use, for a period of more than fifteen years prior to defendant's purchase; and the complainants claim that have a title by possession and user to this easement in the said alleyway, which the defendant has no right to interrupt, by closing that portion of the alley which lies back of his lot and furnishes the outlet to Johnson street.

There is no contention that the alleyway at any time extended beyond the northerly line of the said lot, "George W. Duvall," so that it became, and was, a cul-de-sac, or blind alley, having only the one opening on Johnson street.

As I understand the evidence in this case, it establishes the fact that Richard A. Pyles, when he subdivided the lot known as "George W. Duvall" and built houses upon it, intended to and did dedicate an easement in the said strip at the rear of the lots for an alleyway for the benefit of the occupants of the houses on all these lots. Having marked out the said strip by the fencing and sheds that were appurtenant thereto, and the several purchasers thereafter of the said lots having continued to use the said strip as an alleyway, it was not competent for either of them to close the said alleyway without the consent of the other proprietors.

The covering over of the alleyway at the rear and the cutting off of a portion back of the most northerly lot, as described in the testimony, might very properly have been done by the complainants or the then owners, by and with the consent of the several proprietors of the other lots, and in the absence of proof to the contrary the court might presume that such consent had been obtained.

If such consent was obtained and the alleged encroachment on the northerly end of this alleyway was acquiesced in for several years, it would not, in my judgment, be competent for a new purchaser, occupying the position that the defendant does, to acquire by purchase of the southerly lot any right of objection to such

encroachment at the northerly end of the alleged alleyway.

In fact, whether the alleyway is used or not at its northern extremity is of no consequence to the owner of the south lot, for he can not get out to go anywhere at that end, and having no interest in the intermediate property, could not be materially damaged or inconvenienced by the shed or stable now standing thereon or thereover.

The defendant has not acquired any right to close the alley back of his lot and thus prevent the same from being used by the proprietors of the lots north of his property, by reason of the fact that the complainants, before he purchased his ground, had covered over the north end of the said alleyway or cut off a part thereof by the said stable and shed.

The testimony establishes the fact that the alleyway, after the dedication by the original proprietor, in the manner before stated, has been used continuously by the several proprietors of the various lots for a period of more than fifteen years, and I am inclined to hold that their title and right to such user becomes incontestable.

The title, however, to the alleyway remains in each individual lot owner, subject to this easement or right of use by all the other lot owners in said original lot "George W. Duvall."

I therefore hold that the defendant has no right to build upon the said strip without the consent of the owners of the other five lots lying north of his property; and I will therefore sign a decree, enjoining him from doing so, as prayed in the bill.

## Court of Appeals of the District of Columbia

CECIL FRENCH, PLAINTIFF IN ERROR,

v.

THE DISTRICT OF COLUMBIA.

### POLICE REGULATIONS; MUZZLING DOGS.

The police regulation adopted by the Commissioners of the District, authorizing punishment by fine of any one convicted of permitting a dog to run at large without being securely muzzled, held within the scope of the authority conferred by the act of Congress of January 26, 1887, and not inconsistent with the act of Congress of June 19, 1878, and to be a valid exercise of power by the Commissioners.

No. 1952. Decided November 4, 1908.

IN ERROR to the Police Court of the District of Columbia. Affirmed.

Mr. CHAUNCEY HACKETT for the plaintiff in error.

Mr. E. H. THOMAS for the defendant in error.

Mr. Justice ROBB delivered the opinion of the Court:

This is a writ of error to the Police Court of the District of Columbia, and challenges the validity of a police regulation of the District authorizing punishment by fine of not less than \$5 nor more than \$20 of anyone convicted of permitting a dog to run at large without being securely muzzled.

Section 7 of the act of June 19, 1878 (20 St. at L., 173), imposes upon the Commissioners of the District, when they have good reasons to believe any dog or dogs within the District are mad, the

duty of issuing a proclamation requiring that all dogs for a stated period shall be securely muzzled. The section further provides that any dog going at large during the period defined by the Commissioners without such muzzle shall be impounded by the poundmaster subject to section 3 of said act. Said section 3 provides for the redemption, sale, or destruction of such dogs.

The act of January 26, 1887 (24 St. at L., 368), specifically empowered the Commissioners "to regulate the keeping and running at large of dogs and fowls" in the District. Subsequently article 7 of the Police Regulations of the District was adopted, wherein it is provided that any person owning or having the custody of a dog, who permits it to go at large without being securely muzzled when the Commissioners by proclamation have required all dogs going at large in the District to be so muzzled, shall, on conviction, be punished by a fine of not less than \$5 nor more than \$10.

On June 16, 1908, the Commissioners issued a proclamation requiring every dog in the District for a period of six months to be securely muzzled.

Plaintiff in error contends that the act of 1878 constituted exclusive exercise of the power of Congress to regulate the muzzling of dogs in the District, and that, therefore, said police regulation is void.

It is true that the act of 1878 is comprehensive in its scope and that no authority is therein given the Commissioners to punish those who disregard a proclamation requiring the muzzling of dogs. Evidently, however, Congress deemed it wise to enlarge the authority of the Commissioners, for the act of 1887, above referred to, specifically gives them authority to regulate—that is, to control the keeping and running at large of dogs in the District. If that acts means anything, it authorizes the regulation under which this prosecution was brought. The act of 1878 operated on the unmuzzled dog but not on his owner or keeper. This regulation, by punishing the owner or keeper of such a dog, supplements and renders more effective the act of 1878, and is not inconsistent therewith. Moreover, the act of 1878 was before Congress when it passed the act of 1887 authorizing the Commissioners to regulate the keeping and running at large of dogs. It is to be presumed that Congress was not doing an idle thing, but was clothing the Commissioners with additional authority. The subject being peculiarly within the scope of the police powers of the municipality, the exercise of authority ought not to be questioned unless clearly inconsistent with the express will of Congress.

The police regulation in question being fairly within the scope of the authority conferred by said act of 1887, and not being inconsistent with the act of 1878, which is still in force, must be held to be a valid exercise of power by the Commissioners.

The judgment must be affirmed.

Affirmed.

Partnership.—A promissory note made by one partner alone for a firm debt is held, in *Burdett v. Hayman* (W. Va.), 60 S. E., 497, 15 L. R. A. (N. S.), 1019, not to operate as payment, nor to release another partner from the debt, unless the creditor agrees so to accept it.

**Negligence; Who May Recover For; Communication of Infectious Diseases to Animals.**

In *Eshleman v. Union Stockyards Co.*, in the Supreme Court of Pennsylvania (June, 1908, 70 Atl., 899), it was held that a purchaser of cattle subsequent to the communication to them of a disease has no right of action for the negligence to which the disease is due. The court said in part:

"It is true that the general rule of the law is that whoever does an illegal act is answerable for all the consequences which ensue in the ordinary and natural course of events, though those consequences be brought about by intervening agents, provided such agents were set in motion by the primary wrongdoer, or provided those acts causing the damage were the necessary or legal and natural consequences of the wrongful act. *Filer v. Smith*, 96 Mich., 347, 55 N. W., 999, 35 Am. St. Rep., 603; *Eaton v. Winnie*, 20 Mich., 156, 4 Am. Rep., 377. Thus, to put falsely labeled poison upon the market, to be used by any one who may need the articles named in the label, is negligence, rendering the defendant liable to any person injured, whether the immediate vendee or not. *Thomas v. Winchester*, 6 N. Y., 397, 57 Am. Dec., 455. Or, as in a case where the defendants were engaged in selling meats and sold plaintiff's brother a roll of spiced bacon, and he took it to the plaintiff's house, where he boarded, and plaintiff's wife cooked it for breakfast, and the bacon was in fact spoiled and unfit for food, and made plaintiff sick, on the assumption that the defendant knew that the meat was purchased for consumption was negligent in selling it, it was held that there was a good cause of action. *Craft v. Parker, Webb & Co.*, 96 Mich., 245, 55 N. W., 812, 21 L. R. A., 139; see also 26 Am. & Eng. Ency. of Law, pp. 461, 462). But, on the other hand, it is decided that answerable negligence exists only where the party whose negligence occasions the loss owes a duty arising from contract or otherwise to the person sustaining the loss. *Kahl v. Love*, 37 N. J. Law, 5. Therefore, in *Losee v. Buchanan* (51 N. Y., 476, 10 Am. Rep., 623), it was held that if an explosion is caused by a defect in the manufacture of a boiler the manufacturer is not liable in the absence of proof that such defect was known to him or was discovered upon examination or by application of known tests; and in *Curtin v. Somerset* (140 Pa., 70, 21 Atl., 244, 12 L. R. A., 322, 23 Am. St. Rep., 220), that in order that a person who has been injured by an accident may hold another responsible therefor upon the ground of negligence there must be a casual connection between the negligence and the hurt, and such casual connection must be uninterrupted by the interposition between the negligence and the hurt of any independent human agency. In this case a contractor for the erection of a hotel building, who used improper material in its construction and in other respects departed from the specifications embodied in his contract, so that the building, when completed, was structurally weak and unsafe, was determined not to be liable to a guest of the hotel for an injury caused to him by such defective construction, but occurring after the owner had taken possession. To the same effect are *Fitzmaurice v. Fabian* (147 Pa., 199, 23 Atl., 444), and *First Presbyterian Congregation v. Smith* (163 Pa., 561, 30 Atl., 279, 26 L. R. A., 504, 43 Am. St. Rep., 808).

It seems to us to be clear that there may be in some instances a recovery without regard to privity of contract. In all actions of negligence he who is guilty of the wrong is liable for the damage sustained by any one injured by the wrongful act. He is responsible, however, to him to whom the wrong is done, and not to those who suffer the remote consequences of it. If, while in the possession of either real or personal property, an injury is done to that property, the right of action is alone in the then owner, and not in any successor in the title. The recent case of *Moore v. City of Lancaster* (212 Pa., 642, 62 Atl., 100, 2 L. R. A. (N. S.), 819), determines this principle. Following, then, the same to its logical conclusion, the plaintiff would have no cause of action if the wrong was occasioned while the property was owned by Flickinger. It must be recollected that it is not contended that the infection was communicated from the defendant's pens to the cattle that were placed therein and by that means conveyed to other cattle belonging to the plaintiff. The evidence is that the disease was conveyed to cattle owned by Flickinger, but which *Eshleman* (plaintiff) subsequently bought. If *Eshleman* obtained the cattle from Flickinger contaminated—and no evidence to the contrary appears, for they were in the pens as Flickinger's cattle for the purposes of sale—he took them in the condition in which they then were, and no right of action for negligence would pass through Flickinger to him. No case similar to this one has been cited to nor found by us, and there is no principle that we know of which permits a stretching of the law to the extent which the plaintiff here endeavors to maintain. We are of the opinion that the judgment of nonsuit was properly entered, and we now refuse to take it off."

**Banks—Failure of Depositor to Notify of Forgery.**—In *McNeely Co. v. Bank of North America*, in the Supreme Court of Pennsylvania (June, 1908, 70 Atl., 891), it was held that a depositor failing promptly to notify a bank of the discovery of forgeries, either of his signature to checks or of the indorsement of the signature of payees, can not recover of the bank, irrespective of whether the bank could have protected itself had it been promptly notified.

**Street Railways.**—One engaged in unloading a wagon, with his body in the path of passing street cars, and who for five or ten minutes fails to look or listen for an approaching car, is held, in *Volosko v. Interurban Street R. Co.*, 190 N. Y., 206, 82 N. E., 1090, 15 L. R. A. (N. S.), 1117, to be negligent as a matter of law.

One who slips and falls upon a street crossing rendered slippery by oil applied by a trolley company to its tracks to facilitate rounding a curve is held, in *Slater v. North Jersey Street R. Co.* (N. J. Err. & App.), 69 Atl., 163, 15 L. R. A. (N. S.), 840, to be entitled to recover for injuries received.

**Statute of Frauds.**—An agreement by a purchaser of real estate to assume and pay an encumbrance thereon as part of the consideration, is held, in *Enos v. Anderson*, 40 Colo., 395, 93 Pac., 475, 15 L. R. A. (N. S.), 1087, not to be within the provision of the statute of frauds requiring a promise to answer for the debt of another to be in writing.



### Surety Companies: Rules Governing Obligation of Surety.

In *Atlantic Trust and Deposit Co. v. Town of Lawrinburg*, decided by the United States Circuit Court of Appeals for the Fourth Circuit (163 Fed., 690), it was declared that the strict rules governing the liability of sureties growing out of the ordinary relations of creditor and simple surety are not as fully applicable to the contracts of a bonding company insuring the performance of contracts as a business and for profit. The court said in part:

The contract and specifications, fairly construed, we think, authorized reasonable changes under the direction of the town's engineer, as he was to be the judge of the "manner of construction" of the system, and his plans and "subsequent drawings, supplementing more particularly the work herein contemplated, are mutually held to be controlling parts of this contract." But, if this were not so, it is undisputed that the changes made were all in favor of the contractor, and in the aggregate lessened his liability under the contract several hundred dollars. Fully recognizing the rule of strictissimi juris as applying to contracts growing out of the ordinary relation of creditor and simple surety, we can not and do not recognize this rule as applying to contracts underwritten by these bonding corporations, whose business it is (and a profitable one, too, it would seem, from the number organized and existing) to insure, for a monetary consideration the obligee against a failure of performance on the part of the principal obligor. In such cases, before such bonding company can be released, it must show that the changes made in a contract like this, guaranteed by it, operated injuriously to affect its rights and liabilities. The Supreme Court of the United States has said: "The rule of strictissimi juris is a stringent one, and is liable at times to work injustice. It is one which ought not to be extended to contracts not within the reason of the rule, particularly when the bond is underwritten by a corporation which has undertaken for a profit to insure the obligee against a failure of performance on the part of the principal obligor." *United States F. & G. Co. v. U. S.*, 191 U. S., 416, 24 Sup. Ct., 142, 48 L. Ed., 242.

The very reason for the existence of this kind of corporations, and the strongest argument put forward by them for patronage, is that the embarrassment and hardship growing out of individual suretyship that give application for this rule is by them taken away; that it is their business to take risks and expect losses. If, with their superior means and facilities, they are to be permitted to take the risks, but avoid the losses, by the rule of strictissimi juris, we may expect the courts to be constantly engaged in hearing their technical objections to contracts prepared by themselves. It is right, therefore, to say to them that they must show injury done to them before they can ask to be relieved from contracts which they clamor to execute. In this case no injury, but benefit, came to this defendant from all the changes made, and from the town's guaranteeing the material order and advancing the money for the contracting company to advance and perform the work, and its exceptions because of these are groundless.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

### RULE OF COURT.

**RULE 17. SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

### Legal Notices.

#### FIRST INSERTION.

Richard A. Ford, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *Isabella H. Morrison*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1908. *HELEN MORRISON HALL*, 2811 14th St. N. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,614. Administration. [Seal.] 47-St

Mason N. Richardson, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of *Eliza V. Greene*, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of November, 1908. *WM. J. HOWARD*, 100 Mass. Ave. N. W. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,511. Administration. [Seal.] 47-St

Wm. A. McKenney, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of *Ebeneser Ellis*, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 7th day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of November, 1908. *AMERICAN SECURITY AND TRUST COMPANY*, by *Wm. A. McKenney*, Attorney. Attest: *JAMES TANNER*, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,715. Administration. [Seal.] 47-St

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**Legal Notices.**

**G. R. Linkins, Solicitor**  
**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**  
**John J. Cleary et al., Complainants, v. William**  
**Gerrard et al., Defendants. Equity, No. 27,896.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish complainants' title by adverse possession to original lot 4, square 78, in the city of Washington, District of Columbia, except the rear 10 feet by width of said lot, being house and premises No. 2117 G street northwest. On motion of the complainants, it is, this 16th day of November, 1908, ordered that the defendant, William Gerrard, cause his appearance to be entered herein on or before the fortieth day, exclusive of legal holidays and Sundays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, alienees, and devisees, both mediate and immediate, of the said William Gerrard, cause their appearance to be entered herein on or before the first rule day occurring after ninety days from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks beginning with its next issue. By the Court: **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Thomas Walker, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Charles G. Alexander et al., Complainants, v. Mary**  
**J. Johnson et al., Defendants.**  
**No. 27,783. Equity Doc. 61.**

The object of this suit is to have partition by sale of the west one-half (1/2) of lot nine (9) in block seventeen (17) in the Howard University subdivision of the farm of John A. Smith, known as "Effingham Place," according to plat of said subdivision recorded in Liber district No. 1, at folio 76 1/2 and 77 of the records of the office of the surveyor for the District of Columbia. On motion of the complainants, it is this 17th day of November, 1908, ordered that the defendant, William Alfred Carter, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Bee before said day. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Ralston & Siddons, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Benj. F. Egan, Deceased.**  
**No. 15,480. Administration.**

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Frank A. Egan, it is ordered this 17th day of November, A. D. 1908, that A. M. Tillman, and all others concerned, appear in said court on Monday, the 21st day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Blair Lee, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rebecca Minor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of November, 1908. **BLAIR LEE, Executor, office 844 D St. N. W., Washington, D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,067. Admn. [Seal.]** 47-3t

**Legal Notices.**

**A. H. Ferguson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**Estate of Edward E. Geary, Deceased.**  
**No. 15,600. Administration Docket 38.**

Application having been made herein for letters of administration on said estate, by Fannie W. Geary, it is ordered this 19th day of November, A. D. 1908, that Albert N. Goins, Margaret C. Goins, Helen G. Goins, and George G. Goins, and all others concerned, appear in said court on Tuesday, the 22d day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**J. P. Earnest, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Maria B. Watkins, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 7th day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of November, 1908. **HELEN WATKINS, by J. P. Earnest, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,888. Administration. [Seal.]** 47-3t

**Wilson & Barksdale, Attorneys**

**In the Supreme Court of the District of Columbia,**  
**Holding a Probate Court.**  
**In re Estate of Charles Beall, Deceased.**  
**Probate No. 9888.**

Application having been made herein for probate and record of the last will and testament of said deceased and for letters testamentary on said estate by Catherine B. Dryden, also known as Catherine Dryden Reardon, it is ordered, this 19th day of November, 1908, that Amelia Beall, William H. Beall, Claude S. Beall, and Charles E. Beall, and all others concerned, appear in said court on the 21st day of December, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** A true copy. Test: James Tanner, Register of Wills. 47-3t

**Lester & Price, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Holding a Special Term in Equity.**

**John W. Gregg et al., Complainants, v. Frank W. Smith et al., Defendants. Equity, No. 27,822.**

The object of this suit is to obtain a decree for the sale of the west half of lot numbered two (2) in square numbered two hundred and ninety-six (296), in the city of Washington, District of Columbia, and from the proceeds of such sale pay the debts of Henry S. Smith, deceased, late owner of said property. On motion of the complainants, it is, this 16th day of November, A. D. 1908, ordered that the defendants, Frank W. Smith and Joseph S. Smith, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. A copy of this order is to be published once a week for three successive weeks before said day in The Washington Law Reporter. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Legal Notices.**

H. J. Sweeney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Stephen C. Hull, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. EDWARD N. HOPEWELL, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,605. Administration. [Seal.] 47-8t

Tepper & Gusack, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Max Lieberman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. RACHEL LIEBERMAN, 1589 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,553. Administration. [Seal.] 47-8t

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James J. Barnes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. SARAH BOULTER BARNES, The Iowa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,03. Administration. [Seal.] 47-8t

Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William W. Winship, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. JOHN S. WINSHIP, 1852 28th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,606. Administration. [Seal.] 47-8t

**SECOND INSERTION.**

Chas. J. Murphy, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Daly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of November, 1908. EDWARD V. MURPHY, 2511 Penna. ave. N. W.; MARY J. DALY, 2112 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,567. Administration. [Seal.] 46-8t

**Legal Notices.**

Ralston & Siddons, Solicitors  
In the Supreme Court of the District of Columbia,  
Ingram Memorial Congregational Church v. The  
Unknown Heirs, Devisees and Alienees of Mat-  
thew Standley and the Unknown Heirs, Devisees  
and Alienees of George P. Atwood.  
Equity No. 28,111.

The object of this suit is to declare complainant's title perfect by adverse possession to part of lot numbered one (1) in square nine hundred and forty (940), Washing-  
ton, D. C., described as follows: Beginning for the same at the end of 30 feet from the southeast corner of said lot, and running thence north with the line of James Miller's property and parallel with Tenth street 100 feet; thence northwestwardly, parallel with Massachusetts avenue, 85 feet; thence south, parallel with the first line, 100 feet to Massachusetts avenue; and thence with said avenue 85 feet to the place of beginning. On motion of the complainant, it is, this 6th day of November, 1908, ordered that the defendants, the unknown heirs, devisees and alienees of Matthew Standley and the unknown heirs, devisees and alienees of George P. Atwood, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise, the cause will be proceeded with as in case of default. Provided a copy of this order be published twice in one month in The Washington Law Reporter and The Wash-  
[Seal] ington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-8t

W. K. Quinter, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Estate of Emily L. Truesdall, Deceased.  
No. 14,687. Adm. Doc. 37.

Upon consideration of the report of William K. Quinter, executor, this day filed, reporting the sale of part of lot 4, square 290, Washington, D. C., belonging to the estate of Emily L. Truesdall, to Christian Heurick for the sum of twenty-four thousand two hundred and fifty dollars (\$24,250.00) cash, net to the executor, it is, by the court, this 12th day of November, 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of December, 1908. Provided a copy of this order be published once a week for  
[Seal] three successive weeks in The Washington Law Reporter. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-8t

Gregory & Horner, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Harry H. Hargraves, alias Wm. H. Hargraves, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. H. D. WOODSON, 18 Quincy st. N. E., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,551. Administration. [Seal.] 46-8t

I. Q. H. Alward, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Lulu C. Hemmerly, Complainant, v. Jacob H. Hemmerly and Mary A. Edwards, Defendants.  
Equity, No. 28,046.

ORDER OF PUBLICATION.  
The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 13th day of November, A. D. 1908, ordered that the defendants, Jacob H. Hemmerly and Mary A. Edwards, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Re-  
[Seal] porter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-8t

**Legal Notices.**

Henry H. Glassie, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frank M. Kiggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. DELIA KIGGINS, The Ashley, 18th and V sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,588. Administration. [Seal.] 46-8t

Chas. S. Shreve, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of John F. Garner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. JOHN T. GARNER, 1238 8th st. N.W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,588. Administration. [Seal.] 46-8t

Wm. J. Neale, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Stonestreet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of November, 1908. WM. J. NEALE, 508 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,597. Administration. [Seal.] 46-8t

Irving Williamson, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.  
In re Estate of Mary Macdaniel, deceased. No. 15,021. Upon consideration of the report of Norris Macdaniel, executor of Mary Macdaniel, deceased, it is this 10th day of November, 1908, adjudged and ordered by the court that the sale of lots 40 and 41, square 3926, Brookland, D. C., therein referred to, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 11th day of December next. Provided a copy of this order be published in The Washington [Seal] Law Reporter once a week for three successive weeks before said day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-8t

E. L. White, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph H. P. Benson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. BLANCHE V. BENSON, 1107 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,596. Administration. [Seal.] 46-8t

**Legal Notices.**

Wm. A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Martha V. Milburn, Deceased.  
No. 15,405. Administration Docket —.

Application having been made herein for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by American Security and Trust Company, it is ordered this 12th day of November, A. D. 1908, that Robert Milburn and all others concerned, appear in said court on Tuesday, the 15th day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-8t

W. E. Ambrose, Solicitor

In the Supreme Court of the District of Columbia.

Luella C. Roots, Complainant, v. Edward C. Roots, Defendant. No. 25,055. Equity Docket No. 42.

The object of this suit is to obtain an absolute divorce from the bonds of marriage subsisting between complainant and defendant because of acts of adultery committed by the defendant since the marriage. On motion of the complainant, it is this 3d day of November A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star newspaper and The Washington Law Reporter before [Seal] said day. By the Court: JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-8t

**THIRD INSERTION.**

R. Preston Shealey, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice, That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William H. Bohannon, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. CHARLES W. BOHANNON, 707 13th st. S. E. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,556. Administration. [Seal.] 45-3t

John B. Larnier, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Sarah E. Hannay, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of October, 1908. THE WASHINGTON LOAN AND TRUST CO., by Fred'k Elcheberger. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,572. Administration. [Seal.] 45-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Darr, Peyser & Curlin, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Mary Fogarty**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 2d day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 2d day of November, 1908. **CHAR. W. DARR**, 705 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,873. Administration. [Seal.] 45-81

**I. J. Costigan, Solicitor**

**In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.**  
**Patrick J. Brennan, Marian G. Brennan, His Wife, Margaret B. Hauze, Complainants, v. Agnes B. Brennan, O'Brien, Mary Brennan McDermott, Martin J. Brennan, and his Unknown Heirs, Alienees, Devisees, and Assigns, Defendants.**  
Equity No. 23,128.

The object of this suit is the partition by sale and division of proceeds among those entitled thereto of lot fifteen (15), square eight hundred twenty-nine (829), in the city of Washington, District of Columbia, together with the improvements, rights, privileges, and appurtenances thereto belonging. On motion of the complainants it is this 5th day of November, 1908, ordered that the defendants, **Mary Brennan McDermott, Martin J. Brennan, and his unknown heirs, alienees, devisees, and assigns**, cause their appearance to be entered herein on or before the fortheth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in *The Washington Law Reporter* and

[Seal] *The Washington Herald* before said day. **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 45-81

**J. M. Chamberlain and Oscar Luckett, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**Bladen Forrest, Complainant v. James K. Forrest et al., Defendants.** Equity No. 26,248.

Upon consideration of the report of the trustees, filed this day, it is by the court, this 30th day of October, 1908, ordered that the trustees be, and they are hereby, authorized to accept the offer of **Clarence F. Donohoe** for the purchase of No. 1757 Pennsylvania avenue, N. W., being the west 10.92 feet front by the full depth thereof of lot 8, and the east 14 feet front by the full depth thereof of lot 9, in square 106, containing about 1,746 square feet improved by brick dwelling and stable, in this city and District, for the sum of \$9,000 in cash, less a broker's commission of 8 per cent, and upon compliance with the terms of said offer and final confirmation of the sale, to make conveyance of said property to the purchaser, or his assigns. Provided that a copy of this order be published once a week for three weeks

[Seal] in *The Washington Law Reporter* and *The Washington Post* before said final ratification. **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. A. C. Palmer**, Asst. Clerk. 45-81

**Edward S. McCalmont, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters of administration c. t. a. on the estate of **Frances H. Bryan**, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 4th day of November, 1908. **BENJAMIN C. BRYAN**, by **Edward S. McCalmont**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,842. Admn. [Seal.] 45-81

**Legal Notices.****Maddox & Gatley, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**John P. Hirth, Complainant, v. Henrietta C. Hirth et al., Defendants.** No. 28,010, Equity.

Upon consideration of the petition of **H. Prescott Gatley**, trustee, herein this day filed, it is, this 5th day of November, 1908, by the court, adjudged and ordered that said trustee be, and he is hereby, authorized to sell to **William A. Volland** lot No. 14 in block No. 15 of Mt. Pleasant and Pleasant Plains, as per plat recorded in Book County No. 13, at page 70, of the office of the surveyor of said District, subject to a covenant to dedicate a strip of land 7½ feet from the rear of said lot, whenever the adjoining owners and the Commissioners of said District agree upon a general plan for alleys in said block, at and for the sum of fifty-three hundred and fifty (\$5350) dollars in cash, subject to a broker's commission of three per cent; the examination of title and conveying to be at the purchaser's cost, and rents, insurance, taxes, and water rents to be adjusted to the date of transfer. And that said sale so made shall be finally ratified and confirmed, unless cause to the contrary be shown on or before the 5th day of December, 1908. Provided a copy of this order be published in *The Washington Law Reporter* once a week for three successive weeks before said last-mentioned date. By

[Seal] the Court: **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **F. E. Cunningham**, Asst. Clerk. 45-81

**Wilton J. Lambert and Brandenburg & Brandenburg, Attorneys**

**In the Supreme Court of the District of Columbia.**  
**Millard F. Dunn et al. v. Helen Dunn et al.**  
Equity No. 26,686.

On consideration of the report of **Wilton J. Lambert and F. Walter Brandenburg**, trustees, filed herein upon the 30th day of October, 1908, submitting the offer of **Emily Kretchmar** for the purchase of the property involved in this proceeding, the same being lot numbered ten (10) in block numbered sixteen (16), as per plat recorded in county book numbered six (6), at pages 103 and 104, of the surveyor's office of the District of Columbia, together with the improvements thereon, for the sum of eighteen hundred and fifty dollars (\$1850), less a commission of three per cent (3%) to the real estate agent effecting said sale, payments to be made—five hundred dollars (\$500) in cash and the balance payable on or before one year, secured by a first trust upon the property sold, it is, this 30th day of October, 1908, ordered that said offer be accepted and said sale be made and confirmed by the court unless cause to the contrary be shown on or before the 30th day of November, 1908. Provided this order be published once a week for three successive weeks before said last mentioned

[Seal] day in *The Washington Law Reporter*. By the Court: **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **R. P. Belew**, Asst. Clerk. 45-81

**Stuart McNamara, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was by the Supreme Court of the District of Columbia granted letters of administration on the estate of **Thomas Broderick**, deceased, has with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 23d day of November, 1908, at 10 o'clock A. M. as the time, and said court room as the place for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 30th day of October, 1908. **WM. T. FINN**: **Stuart McNamara**, Attorney. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,739. Administration. [Seal.] 45-81

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# The Washington Law Reporter

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WASHINGTON, D. C. - - - - - NOVEMBER 27, 1908

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### Mutuality of Benefit an Essential Element of a Party Wall.

An interesting decision has recently been rendered by Mr. Justice Barnard, holding Equity Court No. 1, of the Supreme Court of this District, in the case of Rael et al. v. Mayer et al. Complainants are the owners of a lot in this city, together with a right of way for alley purposes over the rear two feet six inches of an adjoining lot and subject to a like right of way over the rear two feet six inches of their lot for the benefit of certain lots in the same subdivision. Defendants owned property in the same square adjoining complainants' lot on the rear. Complainants' lot is improved by a brick residence. Defendants' undertook the erection of a bakery on the property owned by them, and in doing so encroached on that part of complainants' lot embraced in the said alley about six inches, interfering with the use of said alley. Defendants admitted that they were so building the wall, claiming the right to build a party wall at that point, and alleged that they had permission of the building inspector to so place the wall. An injunction was granted by Mr. Justice Barnard, who held that the central idea as to the meaning of a party wall is that of mutuality of benefit, and that inasmuch as complainants' lot was already built upon and they were bound by the covenants of their deed to dedicate forever the rear two feet six inches of their lot for alley purposes for the benefit of other owners in said square, the element of mutuality was lacking. It was further held that the permission obtained from the building inspector to place the wall at that point did not affect complainants' right to an injunction. The decision will be reported in our next issue.

## Court of Appeals of the District of Columbia

JAMES RUDOLPH GARFIELD, SECRETARY OF THE INTERIOR, APPELLANT,

v.

THE UNITED STATES OF AMERICA EX REL. EUGENE E. STEVENS ET AL.

No. 1941. Decided November 6, 1908.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal by James R. Garfield, Secretary of the Interior, from an order directing a writ of mandamus to him to vacate an order made by him as Secretary of the Interior on May 1, 1908, disbaring Eugene E. Stevens, Thomas R. Harney, and the firm of Milo B. Stevens & Co., and to restore them to practice before the Department of the Interior, its bureaus and offices.

The petition against the respondent Garfield alleges that he was on April 13, 1907, and has been continually since, Secretary of the Interior for the United States.

That on November 23, 1896, one Milo B. Stevens and Eugene E. Stevens were partners under the firm name of Milo B. Stevens & Co., practicing before the Department of the Interior and the several bureaus thereof, having been duly admitted thereto. That Milo B. Stevens died November 23, 1896, and on December 2, 1896, the relators, Eugene E. Stevens, Thomas R. Harney, Martha G. Harney, then Martha G. Stevens, widow of Milo B. Stevens, and Evelyn Stevens, by her guardian, Martha G. Stevens, now Harney, became, and have continually since been copartners under the said firm name of Milo B. Stevens & Co., and practitioners before said Department.

That neither Martha G. Harney, nor Evelyn Stevens, has been formally admitted to practice before said Department, but Eugene E. Stevens and Thomas R. Harney were duly and formally admitted to practice, and with the knowledge of respondent, they, with their copartners aforesaid have been engaged in said practice as constituent members of the firm of Milo B. Stevens & Co.

That on April 13, 1907, relators Eugene E. Stevens and Thomas R. Harney were served with a citation charging them, under the name of Milo B. Stevens & Co., with improper, unprofessional and illegal conduct, in connection with certain claims for military bounty land.

That said parties were orally heard before the respondent and filed a statement in reply to said charges. That afterwards, respondent, upon the consideration of these so-called answer, testimony and argument promulgated an order, on May 1, 1908, disbaring said relators and the firm of Milo B. Stevens & Co. from practice before said Department. That thereafter relators made an application for reconsideration of said action, which was denied.

That in their answer relators relied in part defense upon an alleged practice of purchase by practitioners before said Department, of land warrants from their clients, long well known to, and suffered and permitted by said Department without objection or condemnation, which has become and was known as "a kind of common law custom or usage in the transaction of such business, and in the practice in such class of cases."



That, nevertheless, upon an ex parte investigation and report of certain subordinate officials of said Department, and without opportunity to relators to participate in such investigation, or to support, by the production of witnesses, their allegations in the premises, the respondent decided the contention of the relators in that behalf adversely to them, and in part rested his conclusion and decision upon the pretended adjudication that such practices did not exist and had not existed; whereby relators were deprived of due process of law, and of the opportunity to make good their defense.

That relators have, through much advertising and labor, built up a lucrative business and practice before the said Department, and have more than 42,000 claims for pensions and more than 250 for patents, pending in said Department, the fees in which have been partly and in some cases fully earned, and the order disbarring them will utterly destroy their said business.

That neither Martha G. Harney nor Evelyn Stevens was cited to answer said charges, nor was offered an opportunity to be confronted with the witnesses produced in support thereof, and were not within the jurisdiction of the respondent.

That relators have no right of appeal or writ of error from the action of the respondent, and no relief save through the writ of mandamus. The citation, answer thereto, and brief in support of relator's contention before the respondent are made exhibits to the petition, and will be referred to later.

The amended answer of the respondent alleges the following facts substantially.

Rule 5 of the regulations prescribed by the Secretary of the Interior, under authority of the act of July 4, 1884, in regard to admissions to practice, requires that in the case of a firm the names of the individuals composing the same must be given and a certificate and oath as to each member of the firm will be required; and under this rule it has been the practice to decline to recognize a firm unless each member thereof has been admitted to practice and is in good standing.

After the death of Milo B. Stevens, in 1896, and upon motion of Eugene B. Stevens, as sole surviving member of said firm of Milo B. Stevens & Co., and upon the statement of Eugene E. Stevens and Thomas R. Harney that they had formed a copartnership, they were permitted to practice before the Department under the firm name of Milo B. Stevens & Co. on June 24, 1897, upon the condition precedent that they should procure from the legal representatives of the late Milo B. Stevens a statement that no objection is had to the use of the said firm name of the new firm; further, that said Stevens and Harney shall not take into partnership any new persons to practice under said firm name; and, further, that the said Stevens and Harney shall file a joint statement duly authenticated accepting the terms aforesaid.

The said parties filed the affidavit of the widow of Milo B. Stevens, as required and accepted the terms of said admission to practice.

That said Martha G. Stevens, widow of Milo B. Stevens, became the wife of Thomas R. Harney, October 19, 1898, and Evelyn Stevens is the daughter of said Milo B. Stevens. Neither of them has been admitted to practice before the Department, as individuals or members of the firm of Milo B. Stevens & Co., nor was disbarred by said

order of May 1, 1908, and therefore has no status to join in the petition for mandamus. The said parties never had been admitted to practice, and the Department officials had no knowledge that they were members of said firm of Milo B. Stevens & Co., as admitted to practice.

The alleged averment that the practice of attorneys to purchase land warrants of their clients was known to and acquiesced in by the Department officials is denied. That said claim is not a legal defense to the charges made, and was not so considered by respondent. The investigation of these charges of knowledge and so forth by officials of the Department was made by the respondent to inform himself regarding the same, but not by way of meeting any defense founded thereon, as the sufficiency of the averment as a defense was not recognized.

It is not true that upon such investigation the respondent decided the said contention against relators, for in reaching his final decision he did not consider the said facts, as in his opinion the defense, if true, had no merit. There was, therefore, no denial of due process of law in the premises.

The relators were charged in detail in the citation with specific acts of misconduct, and given thirty days to answer the same. The answer thereto admitted the doing of the acts charged, but denied that by reason thereof they were guilty of any offense. They submitted certain evidence in their behalf, which consisted, among other things, of receipts procured from their clients for the sums of money they had been charged with improperly procuring from them, showing payments made to them of said profits after the institution of the proceedings against relators. These receipts show payments, after the institution of the disbarment proceedings, of sums of money varying from 50 to 600 per cent more than the amounts they had originally paid to their clients. This difference they had retained for their own profit, and the defense founded on said receipts was that they had made restitution. On this record it was not necessary to produce any witnesses to prove the facts which the relators admitted in their answers and in the evidence offered in support thereof. It became solely a question whether, on the admitted facts, the charges were sustained, and whether the relators had violated the provisions of the act of July 4, 1884, and the laws, rules, and regulations of the Department governing the practice of attorneys practicing before the same. Relators were permitted to make all the arguments desired, and appeared in person and by attorney at the hearing. Relators were not denied the right to be confronted with witnesses or to refute the testimony with witnesses. The fact is that no witnesses were produced because relators admitted the facts stated in the citation. There was no testimony offered to be refuted, and relators did offer all the testimony they desired in answer to said charges.

Respondent admits that before the issuance of citation and before any charges were made, the Commissioner of Pensions had caused an investigation to be made concerning improper practices in the Department, which had no particular relation to these relators, and in the course of this investigation, it was shown by depositions taken that certain attorneys were trafficking with their clients by procuring assignments of their land

warrants at grossly inadequate prices, and selling the same at their market value, thereby reaping a large profit. This investigation was made only for the purpose of informing the Commissioner of Pensions as to the conditions obtaining in his bureau, and at the time of the same or during its continuance it was not, and could not be known whether the relators or any other persons would be charged with any offense as the result thereof, or that the investigation would disclose sufficient ground to charge them with any offense. After the investigation was concluded, it was concluded by the Commissioner that there was reasonable ground to charge the relators with improper practices, and he then issued his citation in which were embodied the specific acts which the relators were called upon to answer. This citation became the basis of the proceedings and was the only accusation made. Up to this time relators were under no legal charge which they were compelled to answer, and under the circumstances no notice was given to them of the taking of the deposition.

When they were charged by the issue of the citation they made their response admitting the purchase by them of warrants as alleged, but denying any wrongful intent and their liability under said charges, and the jurisdiction of the Secretary to entertain the same.

That all the time demanded was given respondents to be heard, and after hearing them the Commissioner made a report to respondent recommending the disbarment of relators.

Thereafter respondent granted them a full hearing in person and by counsel. While objections were made that the depositions upon which the citation was based were taken without opportunity to the relators to cross-examine the witnesses, the real contention was that the acts charged and admitted did not fall within the law, and the jurisdiction of respondent to make the same the basis of disbarment; and that even if respondent should decide that the offenses charged and admitted were of sufficient gravity to disbar relators, that they had made restitution to their clients of the sum of \$6,841.95 by repaying moneys improperly obtained from twenty-two of them, and for that reason clemency should be shown. In support of this the following extract is quoted from the brief of counsel filed with respondent: "Tried by every standard, they have not been guilty of any conduct meriting the action recommended. On the contrary, by their frank acknowledgment of the inadvertence which led them into their position, and their prompt and full reparation of that inadvertence, they not only have removed all just grounds of criticism, but also have, indeed, qualified themselves to extort commendation, and to repel the condemnation and humiliation sought to be visited upon them." The proceedings are set out in exhibits, which include the correspondence, applications, etc., relating to the admission of the relators to practice as alleged in the answer.

One of the exhibits is the report of the Commissioner of Pensions containing the depositions, etc., taken in his preliminary investigation.

The following extract is taken from the concluding portion of the answer:

"He denies that the so-called testimony 'relied upon in support of the charges is and was in direct disregard of the settled rules of evidence,' because, as above set forth, it was not claimed that wit-

nesses testified orally in support of said charges. The citation set out with great particularity the facts which the relators were called upon to answer, and specifically set out and referred to the facts deemed important in the charge, and also set out certain documentary evidence in the form of letters and extracts from letters written by the relators to their clients, which letters and extracts from letters had been procured through the taking of the depositions as aforesaid before the issuing of the citation. The citation also referred specifically to the original warrants bearing the endorsements of the clients of the relators and of the said relators themselves which were on file in the public records of the Department. The answer of the relators did not deny the dealing by them in the warrants, as charged, although it raised the question as to the legal import of their acts in the premises, and denied any guilty intent or knowledge in the performance of such acts. In their original response the relators set forth a copy of a letter written by them to one of their clients, and, in reply to the suggestion of the Commissioner that they should submit such evidence as they might possess and might desire to offer in support of the allegations of their response, the relators submitted certain exhibits in the form of memoranda made from their files, an exhibit showing the amounts received and refunded by them in each case, and certain letters passing between themselves and certain of their clients, including a letter sent to each of their clients to whom they made refundment, and certain affidavits, six in number. It is accordingly denied that the substantiation of the charges in the citation was made in violation of the settled rules of evidence."

The charge, filed as an exhibit to both petition and answer, and dated April 13, 1907, was directed to and served upon the relators, Eugene B. Stevens and Thomas R. Harney, doing business under the firm name of Milo B. Stevens & Co., with notice to show cause on or before thirty days after service, why they should not be recommended to the secretary for disbarment. The general charge is: "As such attorneys, you, and each of you, are hereby charged with improper, unprofessional and illegal conduct in connection with each claim for military bounty land jointly filed by you and mentioned in this letter in resorting to the methods and in committing the specific offenses set forth below." The specific charges related to claims in the names of fourteen persons in succession, and charge the purchase of the land warrant of the respective clients at less than its market value, through failure to inform them of its actual value, and misleading them as to the same. The charges are accompanied by letters of Milo B. Stevens & Co. to the client, relating to the purchase, etc., These are too long for insertion in full, and some of them only will be stated here chiefly as summarized in the answer of relators thereto, with their reply to the same. One charge relates to Pygall's case in which the following extract from a letter of relators to Pygall on December 16, 1904, is quoted: "It is going to be very difficult to obtain a duplicate of the bounty land warrant that was issued to your mother and five children, because it is going to be difficult for you to furnish the required evidence. However, we have concluded to try the case if the surviving heirs at law will agree to sell the warrant to us for \$100 cash, provided we secure it. If the surviving heirs will

agree to the above, we will make no charge for our services in prosecuting the case and we will pay for the advertisements that will have to be inserted in the newspapers concerning the loss of the warrant. We will be put to considerable expense in the matter and besides we will have to take all the chances of success." It is charged that they well knew that the duplicate warrants if issued could be sold for not less than \$480, and made no statement as to actual value, but attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three fourths of the value of the warrant if issued. "Any written or oral contract which you may have entered into to that end is wholly void and in violation of sec. 2436 R. S." Notice was given that the claim had been allowed by the Department and forwarded to the claimant.

The answer returned to this was:

(1) It was not possible to know, and parties did not know what would be the value of the warrant when issued.

(2) The claimant was not informed of the actual value of the warrant because the same was not known. Relators did not profess to fix any value on the warrant, unless the offer to purchase at a set price be construed into such an attempt, and did not attempt to mislead the claimant as to any sources of information accessible as to the value of the warrant, or say anything inviting reliance upon the offer to the exclusion of any inquiries they might see fit to make. It was further said as regards a champertous and illegal contract, "we do not admit that our letter is justly capable of any such construction. We were not undertaking to induce the claimants to *divide* the produce or fruit of our services, which is essential to champerty, but we frankly admit that we were endeavoring to buy, in advance, the subject of the claim, and this, we submit, we might lawfully do against the whole world, except the claimants whose privilege it was in the end, to refuse to carry the bargain into effect. This consideration is involved in the third allegation to which we pass:

"(3) That any written or oral contract which we may have entered into in the premises may have been void under section 2436 R. S. U. S., may be admitted, but that it was in violation of that section is respectfully denied, for the reason that that section does not forbid such agreements; it only makes them void, and it has been so frequently adjudged that the invalidity of such and similar agreements is available only to the claimant, who may, or may not, insist upon such invalidity, that it seems necessary only to add that, as all persons are equally presumed to know the law, the claimants must be presumed to know that, at the end of our labors and the rendition of our services in the premises, it remained for them, and them only, to recognize or to repudiate any supposed obligation on their part in the premises."

It was then added that the facts in the case were most complicated, and the services involved many and great difficulties. That on December 5, 1906, Pygall wrote that he had received the warrant and offered to send the same for \$100; but hearing, on inquiry at the Department, that an order had been issued directing warrants to be delivered to none other than the claimants, and that it did not look

with favor upon the practice of attorneys buying warrants from their clients, they wrote to Pygall on December 12, 1906. This letter explained the attitude of the Department, and asked him to dispose of the warrant and remit their fee of \$10.

The charge in the Graves case was that on October 5, 1903, relators filed application for a duplicate military warrant for the party living in Jackson County, Tennessee. Duplicate issued April 27, 1904, and was delivered to relators May 19, 1904. During May, 1904, they induced the client to assign said warrant to them for \$100 and on July 30, 1904, the warrant was sold through William J. Johnson to Abram Matthews for \$364.90. The answer to this was as follows:

"It is true that we made the application stated and received an assignment of the said warrant for the sum of one hundred dollars. We have no knowledge as to the allegation that the said Johnson sold the warrant for the sum mentioned, except on information and belief, and, in selling the said warrant, the said Johnson was not acting for us in the transaction."

The Monaghan case charge was that relators prosecuted the claim to successful issue for Margaret Monaghan, widow, and had been certified a fee of \$25 under fee agreement filed. Said warrant was issued July 7, 1905, and delivered to relators on July 24th. On August 7, 1905, they induced said client to assign said warrant to one of them, Thos. R. Harney, for the sum of \$200, and said warrant was sold to W. R. Abbott by R. A. Fennell of Washington, D. C., for \$720. The answer was as follows: "It is true that the warrant in this case was purchased by us for \$200, but we had no relation whatever to the sale thereof to Abbott by Fennell."

The McKean case charge was that respondents filed this claim for a land warrant on March 8, 1905, for claimant, a resident of Guadalupe County, Texas, and during the pendency of the claim entered into an agreement by which the warrant if issued was to be assigned to them for \$75. The warrant was issued December 1, 1905, and delivered on February 7, 1906, to them, they having certified a fee of \$10, for services rendered in prosecution of the claim. The warrant was assigned to said Thomas R. Harney, one of the relators, in consideration of \$75 and was, on February 21, 1906, sold by them for \$240. The answer to this was: "These allegations are true, except that we waived our fee of \$10 and made no attempt to collect the same."

In the Reddick case the charge was that the respondents filed the claim for Sallie B. Reddick of Los Angeles, Cal., for warrant which was issued August 28, 1905, and delivered to relators on September 11, 1905. That on September 16, 1905, they induced her to assign the warrant to Thomas R. Harney, and said warrant was sold to W. R. Abbott by R. A. Fennell, September 19, 1905, for \$720. To this they answered: "This warrant was purchased by us for \$200; we received no fee; and there were some expenses incident to the purchase of the warrant. We had no relation to the alleged sale to Abbott by Fennell, and the same was not made on our account."

In the Shirkey case, the admission was that the warrant was delivered to them September 30, 1904; they induced Shirkey to assign the same to them for \$150 on March 23, 1905, and resold the same on April 25, 1905, for \$540. That they received no

fee in the case, and paid other counsel for services in connection therewith.

Additional cases to those specifically stated were five in number. The charge gave the names, and dates of issue of warrants, and charged that the several clients were induced to assign their warrants to their attorneys for the smallest sums possible, and that the respondents then resold the same at the highest prices obtainable in violation of sections 3 and 4 of the act of July 4, 1884, and in violation of professional duty to said clients. To this they answered as follows:

"We admit that we purchased the warrants in these cases, but, in each instance, for a sum agreed to by the claimants, and we admit that we sold the warrants at the best prices which we could obtain, but we deny that, in so doing, we violated any of the provisions of sections 3 and 4 of the act of July 4, 1884.

"These sections of the act mentioned prohibit the demanding or receiving of compensation for services in procuring land warrants, otherwise than in accordance with the provisions of the sections. In no instance did we demand or receive any compensation for our services in excess of that fixed by the law; in every instance we bargained for the purchase of the warrants and none of the claimants in these, or any of the other cases, could possibly have understood otherwise. We admit that our agreements were of the nature contemplated by section 2436, R. S. U. S., but, as hereinbefore stated, that section does not prohibit such agreements, but merely renders them void to the extent, and in the sense, that it was the privilege of the claimants at any time to repudiate the agreements, and we were powerless to enforce them against the claimants, should they set up their invalidity. To what extent our action in the premises may be deemed reprehensible, or the severe punishment threatened us be justifiable, we consider hereinafter."

The conclusion of the answer is in the nature of an argument in respect of legal obligations to clients, the character of said warrants and difficulty of obtaining anything for them, etc. The following is the paragraph in relation to the knowledge of and acquiescence of the Department in such practices:

"When we entered the field of procuring these warrants, we found an established practice of many years' standing, as we believe, of attorneys dealing in warrants of their own procurement, which practice we had reason to believe, and believed, was with the full knowledge of the bureau, and which not only was not the subject of any rule, but which, also, had not been made the subject of any criticism by the bureau, according to either our knowledge or surmise. Moreover, throughout our transactions in the premises, we had a representative in daily contact with the bureau, and no intimation, direct or indirect, was ever made to either such representative or ourselves of any suspicion of impropriety in the prevalent practice. As already stated, in the fall of 1906, we first learned of the discountenance by the bureau of the practice, and immediately abandoned it, as is evidenced by our action in the Pygall case, above stated."

The answer also contained the following:

"2. It is not true that at the time of filing the articles of agreement in any case, it was not our intention to collect a legal fee for our services, but

to obtain, indirectly, greater compensation than is provided by law. It was our original and honest intention to live up to our agreements of employment, if our clients did not change our relation from that of attorney to that of intending purchaser. Had our proposition to purchase in any case been declined, we would have lived up to both the letter and the spirit of our contract of employment and gone on with our work as attorneys to the end. The suggestion that we were taking advantage of the lack of knowledge of our clients in such matters is met by what is hereinbefore said in reply to the immediately preceding charge and otherwise hereinbefore in relation to the provisions of sections 3 and 4 of the act of 1884; so much so that we hardly deem it necessary to add that it is not charged or intimated, and it is not true that we have been guilty of the only thing in respect of which reprobation may be visited upon an attorney dealing with his client in respect of the purchase of the subject of his services, namely, the taking advantage of the client by either misleading him by affirmative statements or throwing him off his guard by concealing from him, or turning him away from, available sources of information to which he might resort to his advantage.

"3. We submit that the charge that, in filing our articles of agreement, we intended, and did, for the time being, deceive the bureau, is wholly untenable. The only thing which it was the province of the bureau to require, or which it was interested in knowing in the premises, was, whether, in appearing as attorneys for applicants, we had the right so to do and were in a position to make good our undertaking in the premises. How the ultimate disposition of the warrant, after being legally procured, could be any affair of the bureau, and how, in the premises, the bureau could be deceived, we respectfully protest our inability to appreciate."

On June 1, 1908, relators filed an additional answer in response to the suggestion of the Commissioner that they submit evidence in support of their answer before made.

This answer makes substantially the same defense, and is accompanied by affidavits relating to the practice of the firm, and the knowledge of the Department of the practices of attorneys, and acquiescence therein. The additional allegation is that relators have returned to each of their clients the profit made by the purchase and sale of their warrants. The following account called "Exhibit Refundment" was filed, with the receipts of the parties for the money returned in each case. This shows the name of the client, amount paid for warrant, amount sold for, fee paid or deducted, and balance refunded, as follows: [See Table at the bottom of next page.]

The relators demurred to the answer of respondents. This was sustained July 3, 1908, and on July 6, 1908, judgment was entered sustaining the petition and granting its prayer for the writ.

From this the respondent gave notice of appeal.

The subsequent proceedings relating to this appeal, which form the subject of two special appeals allowed by the court, necessitate a further statement.

The appeal was sought to be prosecuted under sections 1000 and 1001, R. S., as an appeal brought up by the United States, and by direction of a department of the Government, without bond.

The respondent had been represented in the trial by the United States District Attorney under direction of the Attorney-General, and by the Assistant Attorney-General for the Department of the Interior; and the appeal was by the direction both of the Department of Justice and that of the Interior.

Upon motion of the petitioners the court directed an appeal bond to act as a supersedeas to be filed by the respondent in the sum of \$50,000. To this the respondent entered an exception. Afterwards, the counsel aforesaid filed a notice to the clerk that the appeal prayed and taken was by direction of the Attorney-General and by the Secretary of the Interior and "is to be treated in all respects as a United States case."

The respondent then applied for a special appeal from the order requiring supersedeas bond of \$50,000.

The Court of Appeals has three terms during the year. The first term begins on the first Tuesday of October, the second the first Tuesday after the first day of January, and the third on the first Tuesday of April in each year. The cases for submission are generally disposed of at the April term about the middle of June, when it has been the practice of the court to keep the term open by adjournment from day to day until the commencement of the October term, so that necessary orders may be entered during the interval as occasion may require.

On the day that this special appeal was applied for each member of the court was absent from the District of Columbia. The chief justice was in Clark County, Virginia; Mr. Justice Robb in Falmouth, Mass.; and Mr. Justice Van Orsdel was traveling in Nebraska.

The application was submitted to the chief justice on July 10th, and an order endorsed thereon and signed by him allowing the appeal. It was then sent to Mr. Justice Robb, to whom the chief

justice wrote explaining his action and asking him, if he approved, to sign the order. This he did, and the same was returned to the clerk of the Court of Appeals, who filed and entered the same as directed. When certified to the trial court it was ordered that the special appeal be granted as a supersedeas upon the appellants giving bond in the sum of \$50,000. Exception was taken to this order and another special appeal therefrom was prayed on July 17th, and was allowed in the same manner as the former, with further order directing that the writ of mandamus be stayed without supersedeas bond.

It does not appear from the record when and by whom the original answer to the petition was made. When the amended answer was filed, June 23, 1908, the Secretary of the Interior was absent from the District of Columbia on public business, and the same purporting to be in his name and for him was sworn to by Frank Pierce, First Assistant Secretary of the Interior and then acting as Secretary. The Secretary was absent during the proceedings aforesaid, and it seems that when the writ was ordered to James R. Garfield, Secretary, it was directed to be served on the Acting Secretary aforesaid.

It may be added that it has been the practice of the justices of the Court of Appeals for a number of years to allow special appeals and make formal orders, as in this case, during the summer recess, and the power has never before been questioned.

Motions have been filed by the appellees to vacate the orders allowing the special appeals, and to dismiss the same, and also the regular appeal taken from the final order in the cause.

The grounds assigned are:

1. The allowance of appeal is void because not made in the District and as a court, but by two members of the court apart from each other.

2. If the orders are not void, they are not such special appeals as are within the meaning of section 7 of the act of February 9, 1893, giving jurisdiction to grant special appeals from interlocutory orders.

3. Even if the orders of allowance are not void, and are such as may be made under said act, so much of the order as attempted to stay the writ of mandamus is void for the following reasons: (1) It was beyond the power of the court to stay the execution of the writ in view of the court's own rules, and the general rules of appellate practice, and also under sec. 1282, Code, D. C. (2) Because the effect of the action of the court was to reverse an order of the lower court whose action can only be reviewed on an appeal regularly taken from the order of the lower court. (3) Because on July 17, 1905, the writ of mandamus had been executed and there was no proceeding to supersede. (4) The appeal in the main case must be dismissed because the appellant has not given bond as required by the order of the lower court and the rules of the Court of Appeals.

1. The primary question involved in the several motions to dismiss the general and special appeals is, whether the Secretary of the Interior is entitled to prosecute the appeal from the judgment awarding the writ of mandamus, under the direction of his own, and the Department of Justice, without giving the bond required in ordinary cases; for if he has not, the general appeal must be dismissed. Such dismissal would necessarily carry with it the

Name of Applicant.	Acres.	Paid.	Sold.	Fee.	Refunded.
Besser, James.....	80	\$250.	\$140.	Paid.	\$190.
Bothwell, Bridget.....	110	325.	704.	107.	489.
Bull, George.....	160	200.	465.60	107.	255.60
Cannon, Elizabeth.....	120	150.	349.20	117.	189.20
Clark, Robert.....	160	200.	465.60	107.	255.60
Clary, Sarah A.....	160	140.	580.	117.	360.
Eaton, Mary E.....	160	200.	480.	25.	452.
Fitzgerald, Henry W.....	120	200.	349.20	107.	189.20
Gipson, Letitia J.....	160	75.	480.	25.	530.
Hipson, Letitia.....	80	110.	380.	107.	492.
Hogden, Mary E.....	120	120.	582.	107.	475.
Hogan, Catherine.....	160	443.25	844.	Paid.	137.75
Hollenbeck, Jane.....	160	170.	465.60	107.	255.60
Hollenbeck, Catherine.....	160	350.	590.	Paid.	210.
McKean, Wm. C.....	40	60.	240.	107.	810.
McQuane, Daniel P.....	160	200.	320.	107.	470.
Monaghan, Margaret.....	160	200.	680.	25.	465.
Reddick, Sallie B.....	160	200.	680.	25.	465.
Shirley, John (dec'd).....	120	150.	482.	107.	272.
Pauline Clark (et al.).....	160	208.	704.	107.	498.
Smith, Sarah F.....	160	300.	510.	107.	240.
Stevens, Eliza.....	120	100.	840.	107.	280.
Teel, Geo. (dec'd).....					
Elvira E. Graves, Child.....	80				
		\$4,290.35	\$11,867.20	\$283.	\$6,841.95

special appeals without regard to the questions raised in the motion to dismiss them.

The right to appeal without bond in this case is claimed under sections 1000 and 1001 R. S., which read as follows:

Section 1000. "Every justice or judge signing a citation on any writ of error shall, except in cases brought by the United States or by direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and if he fail to make his plea good, shall answer all damages and costs where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedeas as aforesaid."

Section 1001. "Whenever a writ of error, appeal, or other process in law, admiralty, or equity issues from or is brought up to the Supreme Court or the Circuit Court, either by the United States or by direction of any Department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction, as aforesaid, shall be paid out of the contingent fund of the Department under whose direction the proceedings were instituted."

2. It can not be doubted that this is an action at law the proceedings and judgment in which, under ordinary conditions, could only be reviewed on a writ of error. It comes here on appeal, as that is the proceeding provided in all cases to review a judgment or decree of the Supreme Court of the District of Columbia, or any justice thereof, by section 7 of the act of February 9, 1893, creating the Court of Appeals of the District of Columbia. This appeal would seem, therefore, to come within the spirit of section 1000, R. S., though not within its strict letter. But it is unnecessary to express an opinion on this point, as it has been held that section 1001 authorizes an appeal from the Supreme Court of the District, by an officer representing the United States, without bond, when said appeal had been taken by direction of a department of the Government. *Leonard v. Rodda*, 5 App. D. C., 256, 265: 23 Wash. Law Rep., 229. That was an appeal prosecuted by the warden of the jail from a judgment, in a habeas corpus proceeding, ordering him to release a prisoner committed to jail by order of the Police Court. Mr. Justice Morris, delivering the opinion of the court, said:

"It would be a strange requirement of law if, in the performance of his duty to the United States, and the defense exclusively of public interests, he should be necessitated to give his individual bond for costs in the prosecution of an appeal in a case of habeas corpus. And it would have exceedingly strange consequences if the rights of the public in such cases should be made to depend upon the warden's willingness or ability to give his individual bond." And it was also said that section 1001 is applicable in the District of Columbia as well as elsewhere. See, also, *Palmer v. Thompson*, 20 App. D. C., 273, 277: 30 Wash. Law Rep., 483.

We are asked to reconsider that decision, the contention being that the section is, by its terms, limited to writs of error and appeals in cases

brought up to the Supreme Court or the circuit courts, and that the Court of Appeals is not included therein. This section was enacted long before the creation of the Court of Appeals, when appeals and writs of error were taken directly from the Supreme Court of the District to the Supreme Court of the United States. And it can not be denied that it expressly applies in all cases appealed from the Court of Appeals to the Supreme Court of the United States. Section 1000 was originally enacted in 1789, and, read in connection with section 1001, as it must be, it is plain that the broad purpose of the two is to secure the right of appeal without bond, in all cases involving a public interest, when the appeal shall be taken by direction of a department of the Government. That general intent is not to be thwarted by the subsequent creation of the Court of Appeals as an intermediate appellate court between the Supreme Courts of the District and the United States; and it is given effect to substantially by section 2 of Rule X.

3. It is further contended that a bond is imperatively required by section 1282 of the Code D. C. That section is the last one of the chapter regulating the procedure in mandamus cases, and requires that in case of appeal by the defendant the court shall fix the penalty of the appeal bond necessary to be given to stay the execution or enforcement of the order appealed from. There is no such inconsistency between this section of the Code and sections 1000 and 1001 R. S., as to warrant the conclusion that the latter are repealed by it, in so far as the District of Columbia is involved. The section of the Code, therefore, governs in all cases, save in the exceptional ones provided for by the others.

4. It is further contended that a proceeding for mandamus against the Secretary of the Interior is not such a case as comes within the provision allowing appeal without bond in a case brought up either by the United States or by direction of a department of the Government. This is founded on the proposition that the performance of the duty required is one resting upon the person to whom the writ is directed, and that the writ is aimed exclusively against him as a person, and does not reach the office. *U. S. v. Boutwell*, 17 Wall., 604; *U. S. ex rel. Bernardin v. Butterworth*, 169 U. S., 600; *Roberts v. Valentine*, 13 App. D. C., 38: 26 Wash. Law Rep., 375.

This is undoubtedly true. If such an action was regarded as against the United States, in fact, it would not lie save by their express consent. At the same time, the interests affected by the action to be performed are those of the United States alone. The only way in which the interests of the officer are affected is his liability for costs. The act which he is directed to perform is an official act that can only be performed while he is in office. Upon his retirement from office before the service of the writ the latter becomes ineffectual. The effect was that if he vacated the office his successor could not be substituted as a party in his stead. The suit abates. *Warner Valley Stock Co. v. Smith*, 165 U. S., 28, 31. That was a suit to enjoin the Secretary of the Interior from assuming to exercise jurisdiction in regard to the disposition of certain lands, and to compel him to issue patents therefor to the complainant. The plaintiff failed in the Supreme Court of the District and in the Court of Appeals, and took a further appeal



to the Supreme Court of the United States. Secretary Smith having retired from office before a decision of the final appeal the suit abated, and the court so declaring, ordered the decree in his favor reversed and the bill to be dismissed. The court said that the main object of the bill was to compel the issue of patents, that the mandatory injunction prayed for was in effect equivalent to a mandamus, and that the reasons for holding a suit having this object to have abated, as to him, by his resignation are as applicable to the bill in equity as to a petition for mandamus at common law. The mischief resulting from this doctrine, through frequent changes of officers pending litigation, was remedied by the act of February 8, 1899 (30 Stat., 822), which provides for the substitution of the officer's successor, or successors, in his stead, and prevents the abatement of the suit. The reason for this substitution is that while the action may be personal the interest is not personal but public. The costs in such an action may still be adjudged against the officer, but, for the same reason, Congress has provided that they shall be paid out of the contingent expense fund appropriated for the Department.

Now in this case, as was said in *Leonard v. Rodda*, supra, the appellant has no greater interest in the subject-matter than all other citizens have. His action was in the line of the performance of his official duties as an officer of the United States, under their authority and on their behalf. His appeal was taken in the performance of the same public duty, and it would have a strange consequence if the rights of the public in such cases should be made to depend upon his willingness or ability to give his individual bond. If he should refuse to incur the risk of personal liability no appeal could be taken, and there would be no means by which the Government could avert the result. The Secretary of the Interior was of the opinion that the judgment seriously affected the public interest, and the Attorney-General concurred in that view. As heads of their respective departments they directed the appeal to be taken under sections 1000 and 1001. We think they had the right to do so. We see no difference between this and an appeal taken by a revenue collector, or the receiver of an insolvent bank, by direction of a department of the Government, without bond, which have been upheld as governed by the sections aforesaid. *Schell v. Cochran*, 107 U. S., 625, 628; *Pacific Bank v. Mixer*, 114 U. S., 463. In accordance with this view, the many appeals that have been prosecuted from this court to the Supreme Court of the United States, in like mandamus cases, have been allowed without bond required of the officer; and so far the right to do so has never been questioned. For the reasons given the motion to dismiss the general appeal will be denied.

5. The special appeals from the orders of the trial court requiring a bond to be given in the sum of \$50,000 in order to supersede the execution of the original order awarding the writ of mandamus, were allowed in accordance with the doctrines enounced in *Leonard v. Rodda*, supra, and again declared hereinbefore. Since the appeal in the main case has been held to operate as a supersedeas, without bond, particular consideration of the motion to dismiss the special appeals is unnecessary and unimportant. The questions raised, particularly that involving the power of the mem-

bers of the court to act as a court when apart from each other, and outside of the special territorial limits of the court's jurisdiction, present difficulties the discussion of which would greatly prolong this opinion. Without expressing an opinion with regard to them at this time, the motions are formally denied.

6. This brings us to the consideration of the case on its merits.

The Secretary of the Interior is the chief of one of the great executive departments of the Government, and is clothed with general powers of control and supervision in respect of the manner of the administration of the several minor departments and bureaus thereof. Section 161, R. S. The Pension Bureau, under his control, is an immense establishment which is constantly engaged in the investigation and adjudication of claims for pensions and bounty land warrants, the number of which is enormous. These claims are generally filed and prosecuted by pension agents and attorneys. Before the passage of the act of July 4, 1884 (23 Stat., 98), all matters of procedure in the Pension Office, including the admission of attorneys to practice and their continued recognition, seem to have been governed exclusively by the regulations made by the Secretary. The attention of Congress having been called to alleged irregular practices of attorneys, the House of Representatives, on February 6, 1884, passed a resolution directing the Secretary to furnish such information as he might have touching these matters. His report was made May 7, 1884. In this report it appeared that as many as three hundred and twelve attorneys had been disbarred by the Secretary on proceedings for that purpose. In the pension appropriation act of July 4, 1884, was incorporated a number of provisions relating to the regulation of the business of the office. Section 3 provided that "no agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars," the same to be received only after the claim shall have been allowed. Section 4 provides that duplicate articles of agreement shall be filed in the Department setting forth the fee agreed upon by the parties. Where no fee agreement is filed, the fee shall be "ten dollars and no more." The form of the articles of agreement is prescribed. It further provides that any agent, attorney, or other person prosecuting any claim for pension or bounty land "who shall directly or indirectly contract for, demand, or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided for, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor," punishable by fine or imprisonment or both.

Section 5 provides:

"That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys or other persons representing claimants before his Department, and may require of such persons, agents, or attorneys before being recognized as representatives of claimants that they shall show that they are of good

moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, after notice and opportunity for a hearing suspend or exclude from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant or prospective claimant by word, circular, letter, or by advertisement." 23 Stat., 99.

Among the regulations prescribed thereafter on July 11, 1884, by the Secretary of the Interior are sections 5 and 9, as follows:

"Section 5. In the case of a firm, the names of the individuals composing the firm must be given and the certificate and oath as to each member of the firm will be required."

"Section 9. Whenever an attorney or agent is charged with improper practice in connection with any matter before a Bureau of this Department, the head of the Bureau shall investigate the charge, giving the attorney or agent due notice, together with a statement of the charge against him, and allow him opportunity to be heard in the premises. When the investigation shall have been concluded all the papers shall be forwarded to the Department with a statement of the facts and such recommendations as to disbarment from practice as the head of the Bureau may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent will be recognized as such unless for special reasons the Secretary shall order his suspension from practice."

As shown by the statement of the case heretofore made, the Pension Commissioner, some time prior to April 13, 1907, began an investigation of the general practices of attorneys and agents, taking, in the course thereof, depositions of many persons relating thereto. No charge had then been made against any particular person, and the investigation was had for the information of the Commissioner. Founded on such information, the Commissioner on April 13, 1907, served upon Eugene E. Stevens and Thomas R. Harney, who, by their own statement at the time of their admission to practice, made in accordance with section 5 of the regulations, above quoted, composed the firm of Milo B. Stevens & Co.

7. The first point raised on the charge of the petition that the proceeding was not in accordance with due process of law, is, that the charge against the relators is founded on depositions taken ex parte, and without their knowledge. The formal and regular way to proceed in such cases is to found the charges upon which the attorney is cited to show cause why he should not be disbarred, upon an affidavit stating the facts. Ex parte Wall., 107 U. S., 265, 271. But such affidavits are necessarily ex parte. In no proceeding before the courts has it ever been held that the party charged with the offense should have notice of taking the affidavit and an opportunity to controvert it in advance. It is merely the foundation of the charge which he is called upon to meet. Using it for that purpose, and using it as proof of the charge on the trial are very different things. The Commissioner had the right to make investi-

gations regarding the practices before his office, and to use facts so ascertained as the basis of a formal proceeding to disbar an attorney. Upon the charges so made, if not admitted, he is not empowered to prosecute to judgment, save upon evidence submitted in the usual way with opportunity to the accused to hear and examine the witnesses, and to introduce proofs on his own behalf. The Department did not exceed its jurisdiction or deny due process of law in this respect, and the judgment appealed from can not be supported on this contention.

8. It is admitted that due notice of the charges was given to the relators Stevens and Harney; that they were accorded ample time to answer the same; that they were not denied the right to offer evidence, and that they were accorded a hearing. The contention is that the respondent exceeded his jurisdiction and proceeded without due process of law in two particulars.

(1) Without notice to relators, or opportunity to be confronted with the witnesses, the Secretary made an ex parte investigation of the charge in the answer that the practice of attorneys in buying the warrants of their clients had long been known to the officers of the Pension Bureau, had been acquiesced in, and had grown into a usage, which relieved their conduct of any taint of illegality or impropriety. The answer admits that this investigation was privately made, but avers that it was for the sole purpose of acquiring information by the Secretary as to the conduct of the officials of the bureau in such matters; and that the Secretary held as matter of law that the alleged facts, if true, constituted no ground of defense to, or justification of, such practices. The truth of the answer is admitted by the demurrer. If the conclusion of the Secretary was a sound one, then the relators were denied no constitutional right by his private investigation of the truth of the charge made against his subordinates. That he was right we think is clear. The knowledge by officers of the bureau of the existence of such practices, and their apparent acquiescence therein by reason of failure to condemn, or disapprove of the same, could not change their nature, if illegal and improper, and confer legality and regularity upon them. Long and universally recognized rules of law for the protection of clients and the observance of honor among lawyers can not be abrogated by the toleration or the connivance of officials charged with the administration of the law.

(2) The mass of depositions taken by the Commissioner in the course of the preliminary investigation before referred to, as required by the regulations (sec. 9), accompanied his report made to the Secretary. The charge is that the Secretary considered the same as evidence in arriving at his decision disbarring the relators, and that his conclusion was in part founded thereon. This charge was flatly denied in the Secretary's answer. He states explicitly that no evidence was taken or considered save such as was contained in the answer of the relators to the charges against them, and exhibits appended thereto, because, in his judgment, the answers contained a substantial admission of the specifications of the charge, thereby rendering unnecessary the taking of any evidence in their support. This allegation is also admitted by the demurrer. It is contended, however, that the consideration of this evidence is shown by the

Secretary's final action of May 1, 1908, wherein he directs the Commissioner of Pensions to no longer recognize relators as attorneys, in the following paragraph thereof: "After careful consideration of your recommendations, the testimony in the case, the arguments of counsel and the authorities cited by them I am convinced," etc. The denial of the answer is not inconsistent with this record, for it says that the testimony was contained in the admissions of and exhibits to the answer, and none other was heard or considered. An examination of relator's reply to the specific charges bears out this conclusion. The citation to answer, it will be remembered, contained specific charges that the relators had been guilty of champerty in Pygall's case; that they had purchased the warrants issued to them for their clients from the latter; had misled and deceived clients as to the value of the warrants; had resold the warrants at great profit; had filed fee agreements with no intention to be bound by the same, and had indirectly received fees in violation of law. The response to the citation took up each specific charge, and as shown by the recitals of the same in the preliminary statement, there was a substantial admission of the acts charged in some of the cases at least. Some of the admissions were more direct than others, as will be seen by reading the answers. In some of them there is an evasion of the charge as to profit made in the resale. But these omissions were subsequently supplied by their statement of profits refunded to twenty-two clients, the sum total of which is nearly \$7,000. The denial of the fact that they did not know the actual value of the warrants at the time of purchase (even if that be a defense to the charge of trading with clients), was met by the fact that they were constantly making offers for warrants, and that each one resold subsequently was at a considerable profit. Take for example the admission in the Reddick case: The charge was that the warrant was delivered to relators September 11, 1905, purchased from the client on September 16th for \$200 and resold on September 19, 1905, to one Abbott by one Fennell for \$720. The answer thereto admits the purchase for \$200, but says that relators received no fee, and had no relation to the sale by Fennell to Abbott, only three days after their own purchase. They do not say what profit they made in this transaction, but the "refundment statement" shows that they refunded in this case \$455 after deducting a fee of \$25.

From these admissions the Secretary was of the opinion that they were buying the warrants without giving information of value to their clients, were misleading them in regard to their interests, and defrauding them, and were also exacting indirectly more than the fees fixed by the statute in such cases. Having the jurisdiction to determine the weight of these admissions and evidence, direct and circumstantial, the soundness of his conclusions thereon can not be inquired into in this proceeding. "Whether he decided right or wrong is not the question. Having jurisdiction to decide at all, he had necessarily jurisdiction, and it was his duty to decide as he thought the law was, and the courts have no power whatever under those circumstances to review his determination by mandamus or injunction." *Riverside Oil Co. v. Hitchcock*, 190 U. S., 316, 324, 325.

9. The final contention is that the Secretary proceeded in excess of the jurisdiction conferred

upon him by section 5 of the act of July 4, 1884. That section confers on him the power to make regulations governing the recognition of agents, attorneys, and other persons representing claimants before his Department, and to require that they shall show that they are of good moral character and in good repute and competent to advise and assist clients; and, further, that he may, after notice and opportunity for a hearing, suspend or exclude from further practice "any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner, deceive, mislead, or threaten any claimant by word, circular, letter, or by advertisement."

It is contended that the words of the statute are too vague and uncertain in their definition of the conduct justifying the suspension or exclusion of an attorney from practice before the Department, to be capable of enforcement. Proceedings of the kind, notwithstanding they may have very serious and damaging consequences, are not criminal proceedings. The word "disreputable" is the only one bearing on this controversy to which any uncertainty can be attributed. It was probably used as the equivalent of unprofessional and as applying more appropriately to agents and other persons who, as well as attorneys, might be permitted to practice before the Department. The courts were possessed of the inherent power, at the common law, to inquire into the conduct of attorneys admitted to practice before them, and to disbar them when found guilty of unprofessional conduct. The term was well understood by them and by the attorneys in general, and there was no more practical uncertainty in its application than in that of the word defraud which is so commonly used in criminal statutes without definition. Any conduct violative of the ordinary standard of professional obligation and honor was unprofessional and disreputable. It is rare that statutes have been passed defining or limiting the exercise of this inherent power. Judged by the standard referred to, the admitted conduct of relators was clearly improper and unprofessional. It is not necessary, however, to consider whether the court, having no power to review the action of the Secretary for error, can inquire whether he gave an erroneous construction to the statute. Nor is it necessary to consider whether the Secretary, who in these matters is invested with judicial power, and whose relations to attorneys practicing before his Department are substantially the same as that of a court to attorneys admitted to its bar, has any inherent power in such matters of which the statute is merely declaratory.

In addition to disreputable conduct, the statute warrants the exclusion from practice of one who refuses to comply with the rules and regulations, or who shall with intent to defraud in any manner, deceive, mislead, or threaten a claimant, by word, circular, letter, or by advertisement. The same statute prohibits the demand of a fee in any case of more than \$25, and requires an agreement therefor, the form of which is prescribed, to be filed in the proper bureau. It is further made a penal offense for an attorney to directly or indirectly contract for, demand, or receive any greater compensation than that before established. Section 2436 R. S. also provides that any disposition of warrants or land granted or to be

granted, made before the issue thereof, shall be void.

The relators were charged with conduct misleading their clients, through omission of duty to furnish them information, with misconduct in filing fee agreements with no intention to observe the same, and subsequently waiving the stipulated and lawful fee and indirectly receiving more than the lawful fee through purchase of the warrants at less than their actual value. This purchase of warrants was also charged as illegal under the provisions of section 2436 R. S. Evidently the Secretary considered that the evidence direct and circumstantial, furnished by the answer and its exhibits, sustained the charge of defrauding clients, and violating the provisions of the law denouncing the receipt of fees in excess of the legal rate, and declaring transfers of warrants void. The answer to the charge expressly admitted that the purchase of warrants was void under section 2436, but defended against the same on the ground that the section simply renders such sales void, at the option of the seller, and does not provide any penalty for making the purchase, wherefore it is not an unlawful act. It is quite true that there is no penalty imposed as a punishment for violating this section, but that does not relieve a purchase from being an illegal act. It was intended to prevent fraud in the administration of the land laws and made a rule which was provided by the relators. The charge against the relators was of "improper, unprofessional and illegal conduct" in the matter of the cases specified. The judgment of the Secretary, communicated by letter to the Commissioner for further communication to the relators, recites his conviction that they "have transacted with their clients a business which is clearly incompatible with their obligations as attorneys and with the laws, rules, and regulations under which they were recognized and permitted to represent claimants before this Department and its bureaus." Having jurisdiction of the subject-matter and having found that there was sufficient evidence to show conduct violative of the rules and regulations, his judgment is not subject to review; and it matters not whether matter merely showing that one is disreputable can be ground of action under the statute.

10. An incidental question arises on this record which requires some consideration. Two of the relators only were disbarred. The other two, claiming to be members of the firm of Milo B. Stevens & Co., have joined in this petition. The first two were admitted under the rule to practice in their own and in the name of Milo B. Stevens & Co., having stated that they alone composed the firm. As the business of that firm had belonged in part to Milo B. Stevens, who had died, they were required to procure the consent to their use of their firm name by his representatives. This they did, and were then admitted. Neither the widow of Milo B. Stevens, now the wife of the relator Harney, nor Evelyn Stevens, the infant child of Milo B. Stevens, had ever been admitted to practice before the Department. They could not so practice under the name of Milo B. Stevens & Co. without complying with the regulation. They have nothing of which they can complain, and were, therefore, neither necessary nor proper parties to the proceeding.

We are of the opinion that the court should have overruled the demurrer to the respondent's answer

to the petition. The judgment will, therefore, be reversed with costs, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

## Legal Notices.

### FIRST INSERTION.

E. S. Mussey and John C. Heald, Trustees

In the Supreme Court of the District of Columbia.  
Board of Foreign Missions of the Presbyterian Church in the United States of America et al.,  
Complainants, v. Louisa M. Breckenridge et al.,  
Defendants. No. 25,847, Equity.

Upon consideration of the report of Ellen S. Mussey and John C. Heald, trustees, this day filed, reporting the sale of certain property therein referred to, amounting in the aggregate to \$5,060.00, it is, by the court, this 23d day of November, 1908, ordered that said sales be, and the same are hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 15th day of December, 1908. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter before said [Seal] last-mentioned date. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

Raymond B. Dickey, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Catherine Ebel, Deceased.  
No. 15,810. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Catherine Robinson, executrix named therein, it is ordered this 24th day of November, A. D. 1908, that Mrs. Anna Marie Schneider and Mrs. Barbara Zweigart, both in Aldinger, care of Boblinger, Wurtunberg, Germany, and all others concerned, appear in said court on Monday, the 28th day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. [Seal] BARNARD, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 48-3t

Blair & Thom, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of William Todd Ashby, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of November, 1908. NINA ASHBY, 1836 Oregon ave. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,571. Administration. [Seal.] 48-3t

Walter C. Clephane, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Charles H. Perry, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 20th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said. Given under my hand this 20th day of November, 1908. MARY JANE PERRY, Brightwood, D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,582. Administration. [Seal.] 48-3t

## Legal Notices.

W. E. Ambrose, Solicitor

In the Supreme Court of the District of Columbia.  
Eunice N. Cook, Complainant, v. John E. Cook, Defendant; Sadie Pond, Nellie Ada Hodgson, Co-Defendants. Equity Docket, No. 27,466.

The object of this suit is to obtain an absolute divorce on the ground of acts of adultery committed by the defendant since the marriage of complainant and defendant. On motion of the complainant, it is, this 19th day of November, A. D. 1908, ordered that the defendants cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. By the Court: WRIGHT, Justice. True copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 48-3t

William A. McKenney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Louis E. McComas, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 14th day of November, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 24th day of November, 1908. CLINTON G. EDGAR, by William A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,863. Administration. [Seal.] 48-3t

R. E. Mattingly, Attorney

In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.  
In Re Estate of Augusta Marshall, Deceased.  
Probate No. 14,350.

Robert E. Mattingly, executor, having reported to the court the sale at public auction of part of original lot 5 in square 370, Washington, D. C., described as follows: Beginning for the same on the line of L street at the northwest corner of said lot and running thence east on said street fifteen (15) feet; thence southerly eighty-one (81) feet six (6) inches; thence westerly to the angle in the westerly line of said lot, and thence north seventy-eight (78) feet to the place of beginning, to William R. Kilmon at and for the sum of nineteen hundred and fifty dollars, all cash, it is, this 25th day of November, A. D. 1908, adjudged, ordered, and decreed that said sale be, and it is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 31st day of December, A. D. 1908. Provided that a copy of this order be published once a week for three successive weeks before that day, in The Washington Law Reporter and The Washington Herald newspaper. By the Court: JOB BARNARD, Justice. A true copy. Attest: James Tanner, Register of Wills. 48-3t

John B. Lerner, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Henry Dickson, deceased, have with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 14th day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 27th day of November, 1908. THE WASHINGTON LOAN & TRUST CO., by Fredk. Elchelberger and William King, Trust Officer, Executors, by John B. Lerner, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,789. Administration. [Seal.] 48-3t

## Legal Notices.

Baker, Sheely & Horgan, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the State of Pennsylvania, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Georgianna Bruce, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of November, A. D. 1908; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of November, 1908. WILLIAM A. YOUNG, 1522 Ellsworth st., Phila., Pa. Attest JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,594. Admn. [Seal.] 48-3t

In the Supreme Court of the District of Columbia,  
Holding a District Court.

In re The Extension of Kenyon Street from Seventeenth Street to Mount Pleasant Street in the District of Columbia. District Court No. 715.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved January 22, 1907, entitled "An act authorizing the extension of Kenyon street northwest," having filed a petition in this court praying the condemnation of the land necessary for the extension of Kenyon street from Seventeenth street to Mount Pleasant street to include all of lot 90 of Dennison and Leighton's subdivision, and so much of lot one, Ingleside as lies south of the north line of lot ninety of Dennison and Leighton's subdivision extended westward to Seventeenth street, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, experienced, disinterested men, who shall be freeholders within the District of Columbia, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the said extension of Kenyon street, provided for in the aforesaid act of Congress and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, including the expenses of these proceedings upon the lands abutting said extension and all other lands benefited thereby as provided for in and by the aforesaid act of Congress. It is, by the court, this 23d day of November, A. D. 1908, ordered, that all persons having any interest in these proceedings be, and they are hereby warned and commanded to appear in this court on or before the 31st day of December, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein, and it is further ordered, that a copy of this notice and order be published once in The Washington Law Reporter and on six secular days in The Washington Evening Star, The Washington Herald, and The Washington Post, newspapers published in the said District, commencing at least twenty days before the said 31st day of December, A. D. 1908. It is further ordered, that a copy of this notice and order be served by the United States marshal or his deputies, upon such of the owners of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, and upon the tenants and occupants of the same before the said 31st day of December, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

W. B. Matthews, Solicitor  
In the Supreme Court of the District of Columbia.  
Celeste P. Boyd v. Howard W. Boyd.  
No. 28,074. Equity Doc. —

The object of this suit is to obtain a divorce a vinculo. On motion of the complainant, it is, this 24th day of November, 1908, ordered that the defendant, Howard W. Boyd, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

[Seal] Job BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

**Legal Notices.**

**P. H. Marshall, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Thomas J. Hobbs, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 24th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 24th day of November, 1908. F. E. HOBBS, care of P. H. Marshall, 416 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,880. Administration. [Seal.] 48-3t

[Filed November 10, 1908. J. R. Young, Clerk.]

**J. E. Padgett, Attorney**  
**In the Supreme Court of the District of Columbia.**  
**Charles M. Emmons et al. v. Howard O. Emmons**  
**et al. Equity, No. 28,068.**

The object of this suit is to obtain a decree for partition by sale of lots numbered 245, 246, and 247, in Talbert's subdivision of part of "Chichester," and lot numbered 19 in block numbered 7 of Longnecker's Addition to Congress Heights, and part of lot numbered 18 in square numbered 974, in Washington City, all of said property being situate in the District of Columbia, as described in the bill of complaint in this cause. On motion of the complainants it is this 10th day of November, 1908, ordered that the defendant, Howard O. Emmons, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Evening

[Seal] Star before said day. JOB BARNARD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

**Edward H. Thomas and Andrew B. Duvall, Attorneys**  
**In the Supreme Court of the District of Columbia,**  
**Holding a District Court.**  
**In re the Opening of an Alley in Square 964, in the**  
**District of Columbia.**  
**District Court No. —.**

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of section 1808 et seq. of the Code of Laws for the District of Columbia, have filed a petition in this court praying the condemnation of the land necessary for the opening of an alley in square numbered nine hundred and sixty-four (964), in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the opening of an alley in said square 964 and the condemnation of the land necessary for the purposes thereof, and to assess the benefits resulting therefrom, including the expenses of these proceedings, as provided for in and by the aforesaid Code of Laws. It is, by the court, this 20th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 15th day of December, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter and once in The Washington Evening Star, The Washington Herald, The Washington Times, newspapers published in the said District, before the said 15th day of December, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal or his deputies upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia before the said 15th day of December, A. D. 1908. By the court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 48-3t

[Seal]

**Legal Notices.**

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of Mary Rebecca Steever, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of November, 1908. JOHN W. GLENNAN, 523 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,895. Admn. [Seal.] 48-3t

**J. W. Glennan, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration c. t. a. on the estate of West Steever, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 19th day of November, 1908. JOHN W. GLENNAN, 523 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,894. Administration. [Seal.] 48-3t

**SECOND INSERTION.**

**Richard A. Ford, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Isabella H. Morrison, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 17th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 17th day of November, 1908. HELEN MORRISON HALL, 2811 14th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 16,614. Administration. [Seal.] 47-3t

**Mason N. Richardson, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters testamentary on the estate of Eliza V. Greene, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 18th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of November, 1908. WM. J. HOWARD, 100 Mass. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,511. Administration. [Seal.] 47-3t

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, who was, by the Supreme Court of the District of Columbia, granted letters testamentary on the estate of Ebenezer Ellis, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 7th day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of November, 1908. AMERICAN SECURITY AND TRUST COMPANY, by Wm. A. McKenney, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,715. Administration. [Seal.] 47-3t



**Legal Notices.****G. R. Linkins, Solicitor**

In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
**John J. Cleary et al., Complainants, v. William  
Gerrard et al., Defendants. Equity, No. 27,895.**

**ORDER OF PUBLICATION.**

The object of this suit is to establish complainants' title by adverse possession to original lot 4, square 79, in the city of Washington, District of Columbia, except the rear 10 feet by width of said lot, being house and premises No. 2117 G street northwest. On motion of the complainants, it is, this 16th day of November, 1908, ordered that the defendant, William Gerrard, cause his appearance to be entered herein on or before the fortieth day, exclusive of legal holidays and Sundays, occurring after the day of the first publication of this order; and that the defendants, the unknown heirs, allenees, and devisees, both mediate and immediate, of the said William Gerrard, cause their appearance to be entered herein on or before the first rule day occurring after ninety days from the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published in The Washington Law Reporter for three successive weeks beginning with its next issue. By the Court: **WRIGHT, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Thomas Walker, Attorney**

In the Supreme Court of the District of Columbia.  
**Charles G. Alexander et al., Complainants, v. Mary  
J. Johnson et al., Defendants.**  
No. 27,788. Equity Doc. 61.

The object of this suit is to have partition by sale of the west one-half (1/2) of lot nine (9) in block seventeen (17) in the Howard University subdivision of the farm of John A. Smith, known as "Etingham Place," according to plat of said subdivision recorded in liber district No. 1, at folio 76 1/2 and 77 of the records of the office of the surveyor for the District of Columbia. On motion of the complainants, it is this 17th day of November, 1908, ordered that the defendant, William Alfred Carter, cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Reporter and The Washington Bee before said day. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Ralston & Siddons, Attorneys**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**  
**Estate of Benj. F. Egan, Deceased.**  
No. 15,880. Administration.

Application having been made herein for probate of the last will and testament of said deceased, and for letters of administration c. t. a. on said estate, by Frank A. Egan, it is ordered this 17th day of November, A. D. 1908, that A. M. Tillman, and all others concerned, appear in said court on Monday, the 21st day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**Blair Lee, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Rebecca Minor, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 18th day of November, 1908. **BLAIR LEE, Executor, office 844 D st. N. W., Washington, D. C.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 12,057. Admn. [Seal.]** 47-3t

**Legal Notices.****A. H. Ferguson, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**  
**Estate of Edward E. Geary, Deceased.**  
No. 15,600. Administration Docket 39.

Application having been made herein for letters of administration on said estate, by Fannie W. Geary, it is ordered this 19th day of November, A. D. 1908, that Albert N. Goins, Margaret C. Goins, Helen G. Goins, and George G. Goins, and all others concerned, appear in said court on Tuesday, the 23d day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 47-3t

**J. P. Earnest, Attorney**

**Supreme Court of the District of Columbia,  
Holding Probate Court.**

This is to Give Notice That the subscriber, who was by the Supreme Court of the District of Columbia, granted letters of administration on the estate of Maria B. Watkins, deceased, has, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 7th day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under my hand this 18th day of November, 1908. **HELEN WATKINS, by J. P. Earnest, Attorney.** Attest: **JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,888. Administration. [Seal.]** 47-3t

**Wilson & Barksdale, Attorneys**

**In the Supreme Court of the District of Columbia,  
Holding a Probate Court.**  
**In re Estate of Charles Beall, Deceased.**  
Probate No. 9888.

Application having been made herein for probate and record of the last will and testament of said deceased and for letters testamentary on said estate by Catherine B. Dryden, also known as Catherine Dryden Heardon, it is ordered, this 19th day of November, 1908, that Amelia Beall, William H. Beall, Claude S. Beall, and Charles E. Beall, and all others concerned, appear in said court on the 21st day of December, 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **WRIGHT, Justice.** A true copy. Test: James Tanner, Register of Wills. 47-3t

**Lester & Price, Solicitors**

**In the Supreme Court of the District of Columbia,  
Holding a Special Term in Equity.**  
**John W. Gregg et al., Complainants, v. Frank W.  
Smith et al., Defendants. Equity, No. 27,822.**

The object of this suit is to obtain a decree for the sale of the west half of lot numbered two (2) in square numbered two hundred and ninety-six (296), in the city of Washington, District of Columbia, and from the proceeds of such sale pay the debts of Henry S. Smith, deceased, late owner of said property. On motion of the complainants, it is, this 18th day of November, A. D. 1908, ordered that the defendants, Frank W. Smith and Joseph S. Smith, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. A copy of this order is to be published once a week for three successive weeks before said day in The Washington Law Reporter. **JOB BARNARD, Justice.** A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 47-3t

**Legal Notices.**

H. J. Sweeney, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Stephen C. Hull, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. EDWARD N. HOPEWELL, Fendall Bldg. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,605. Administration. [Seal.] 47-3t

Tepper & Gusack, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Max Lieberman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. RACHEL LIEBERMAN, 1589 5th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,558. Administration. [Seal.] 47-3t

Gordon & Gordon, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James J. Barnes, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. SARAH BOULTER BARNES, The Iowa. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,508. Administration. [Seal.] 47-3t

Jesse H. Wilson and Jesse H. Wilson, Jr., Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of William W. Winship, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of November, 1908. JOHN S. WINSHIP, 1852 23rd st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,606. Administration. [Seal.] 47-3t

**THIRD INSERTION.**

Chas. J. Murphy, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of James Daly, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 12th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 12th day of November, 1908. EDWARD V. MURPHY, 2511 Penna. ave. N. W.; MARY J. DALY, 2112 H st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,567. Administration. [Seal.] 46-8t

**Legal Notices.**

Ralston & Siddons, Solicitors  
In the Supreme Court of the District of Columbia.  
Ingram Memorial Congregational Church v. The  
Unknown Heirs, Devisees and Allenees of Mat-  
thew Standley and the Unknown Heirs, Devisees  
and Allenees of George P. Atwood.

Equity No. 28,111.

The object of this suit is to declare complainant's title perfect by adverse possession to part of lot numbered one (1) in square nine hundred and forty (940). Washing-  
ton, D. C., described as follows: Beginning for the same at the end of 20 feet from the southeast corner of said lot, and running thence north with the line of James Miller's property and parallel with Tenth street 100 feet; thence northwestwardly, parallel with Massachusetts avenue, 35 feet; thence south, parallel with the first line, 100 feet to Massachusetts avenue; and thence with said avenue 35 feet to the place of beginning. On motion of the complainant, it is, this 6th day of November, 1908, ordered that the defendants, the unknown heirs, devisees and allenees of Matthew Standley and the unknown heirs, devisees and allenees of George P. Atwood, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of one month from this date; otherwise, the cause will be proceeded with as in case of default. Provided a copy of this order be published twice in one month in The Washington Law Reporter and The Wash-  
[Seal] ington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-8t

W. K. Quinter, Attorney  
In the Supreme Court of the District of Columbia,  
Holding a Probate Court.  
In re Estate of Emily L. Truesdall, Deceased.  
No. 14,687. Adm. Doc. 37.

Upon consideration of the report of William K. Quinter, executor, this day filed, reporting the sale of part of lot 4, square 280, Washington, D. C., belonging to the estate of Emily L. Truesdall, to Christian Heurick for the sum of twenty-four thousand two hundred and fifty dollars (\$24,250.00) cash, net to the executor, it is, by the court, this 12th day of November, 1908, ordered that said sale be, and the same is hereby, ratified and confirmed, unless cause to the contrary be shown on or before the 2d day of December, 1908. Provided a copy of this order be published once a week for  
[Seal] three successive weeks in The Washington Law Reporter. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-8t

Gregory & Horner, Attorneys  
Supreme Court of the District of Columbia,  
Holding Probate Court.  
**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Harry H. Hargraves, alias Wm. H. Hargraves, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 19th day of October, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. H. D. WOODSON, 18 Quincy st. N. E. Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,551. Administration. [Seal.] 46-8t

I. Q. H. Alward, Solicitor  
In the Supreme Court of the District of Columbia,  
Holding an Equity Court.  
Lulu C. Hemmerly, Complainant, v. Jacob H. Hemmerly and Mary A. Edwards, Defendants.  
Equity, No. 28,046.

**ORDER OF PUBLICATION.**

The object of this suit is to obtain an absolute divorce on the ground of adultery. On motion of the complainant, it is this 13th day of November, A. D. 1908, ordered that the defendants, Jacob H. Hemmerly and Mary A. Edwards, cause their appearances to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Law Re-  
[Seal] porter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 46-8t

**Legal Notices.**

**Henry H. Glassie, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of Frank M. Kiggins, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. DELIA KIGGINS, The Ashley, 18th and V sts. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,583. Administration. [Seal.] 46-31

**Chas. S. Shreve, Jr., Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia, letters of administration on the estate of John F. Garner, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 6th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 6th day of November, 1908. JOHN T. GARNER, 1235 8th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,584. Administration. [Seal.] 46-31

**Wm. J. Neale, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Louis Stonestreet, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 9th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 9th day of November, 1908. WM. J. NEALE, 508 F st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,597. Administration. [Seal.] 46-31

**Irving Williamson, Attorney**  
**In the Supreme Court of the District of Columbia,**  
**Holding Probate Court.**  
**In re Estate of Mary Macdaniel, deceased. No. 15,021.**  
 Upon consideration of the report of Norris Macdaniel, executor of Mary Macdaniel, deceased, it is this 10th day of November, 1908, adjudged and ordered by the court that the sale of lots 40 and 41, square 8926, Brookland, D. C., therein referred to, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the 11th day of December next. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks before said day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 46-31

**E. L. White, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Joseph H. P. Benson, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 13th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 12th day of November, 1908. BLANCHE V. BENSON, 1107 9th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,598. Administration. [Seal.] 46-31

**Legal Notices.**

**Wm. A. McKenney, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**Estate of Martha V. Milburn, Deceased.**  
**No. 15,405. Administration Docket—**

Application having been made herein for probate of the last will and testament and codicils of said deceased, and for letters testamentary on said estate, by American Security and Trust Company, it is ordered this 12th day of November, A. D. 1908, that Robert Milburn and all others concerned, appear in said court on Tuesday, the 15th day of December, A. D. 1908, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be [Seal] not less than thirty days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 46-31

**W. E. Ambrose, Solicitor**

**In the Supreme Court of the District of Columbia.**

**Luella C. Roote, Complainant, v. Edward C. Roote, Defendant. No. 28,065. Equity Docket No. 62.**

The object of this suit is to obtain an absolute divorce from the bonds of marriage subsisting between complainant and defendant because of acts of adultery committed by the defendant since the marriage. On motion of the complainant, it is this 3d day of November, A. D. 1908, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Evening Star newspaper and The Washington Law Reporter before [Seal] said day. By the Court: JOB BARNARD, Justice. True copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 46-31

**FIFTH INSERTION.**

**Brandenburg & Brandenburg, Solicitors**  
**In the Supreme Court of the District of Columbia.**  
**The Edes Home, a Corporation, v. Basil Waters et al. No. 27,823, Eq.**

The object of this suit is to quiet title and establish of record by adverse possession a good title in fee simple in the complainant to the north part of the lot of ground known as lot 221, in Beatty & Hawkins' addition to that part of the District of Columbia formerly known as Georgetown, and described as being the fifty-nine feet six inches on the west side of Market street and running back the full depth of said lot, more particularly described in the bill of complaint, and restrain and enjoin the defendants from setting up, claiming, or asserting any title thereto. On motion of the complainant, by its solicitors, Brandenburg & Brandenburg, it is this 23d day of September, A. D. 1908, ordered that the defendants, Basil Waters, Ignatius Waters, Zedock Waters, Mary A. Waters, Mary E. Waters, Lottie Waters, Hood Waters, Virginia Waters, Eliza Waters, William Waters, Susan Gibson and her husband, Gibson; Agnes Gibson, Anna Dorsey and her husband, Dorsey; Fannie Pennington and her husband, Pennington; Agnes Gibson, James Gibson, Nanie Kimmel, Agnes Dorsey and her husband, Harry Dorsey; Sarah Dorsey, William A. Waters, Zedariah D. Waters, E. Worthington Waters, Washington D. Waters, E. Worthington Waters, Thomas W. Waters, Ignatius Waters, F. Sollers Waters, Fannie W. Lerner, if they be living, or, if any or all of them be dead, then the unknown heirs, allenees, or devisees of any or all of them, cause their appearance to be entered herein on or before the first ruleday occurring three months after the date of the expiration of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three consecutive months in The Washington Law Reporter and The Evening Star before said date. By the [Seal] Court: HARRY M. CLABAUGH, Chief Justice. A true copy. Test: J. R. Young, Clerk, by Wms. F. Lemon, Asst. Clerk. sept. 25; oct. 2, 30; nov. 6, 27; dec. 4.

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WASHINGTON, D. C. - - - - DECEMBER 4, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

Bonds; Breach of Trust by Principal; Waiver by Obligor; Discharge of Surety; Extension of Time of Payment.

In the Catholic University of America v. Morse the action was to charge the estate of a deceased surety on a bond for an alleged breach by the principal. The bond was given by Thomas E. Waggaman as treasurer of the plaintiff corporation, and required that he should pay over all moneys received by him for the plaintiff, and should safely keep, account for, and deliver up all notes or other evidences of indebtedness belonging to the plaintiff. It appeared that certain moneys entrusted to him by the plaintiff for investment had, in fact, been loaned by him to himself upon inadequate security, but that the plaintiff, with knowledge of the facts, had subsequently recognized and adopted such loans, accepting the notes and collateral security evidencing the loans, and had also, with knowledge that there had been a breach of trust on his part, and without the consent of the sureties, entered into an agreement with him extending the time for payment of its claim. The trial court directed a verdict for the defendant upon which judgment was entered. The Court of Appeals, in an opinion by Mr. Justice Robb, affirms the judgment, holding that the dealings between plaintiff and Wagga-

man, after discovery of his breach of trust, absolved the sureties from liability on the bond. The rule of strictissimi juris is declared to apply in this case.

Mr. Justice Van Orsdel concurs in the conclusion that the sureties were discharged by the agreement between the obligee and the principal in the bond extending the time for payment of the note. **Life Insurance; Right of Administrator of Insured to Sue; Breach of Warranty.**

In *Rodier v. Life Insurance Company of Virginia*, the appeal was from a judgment for defendant, entered upon a verdict directed by the court, in an action on a policy of life insurance. The policy by its terms promised to pay the amount to the mother of insured, or in event of her prior death to his executors, etc. The defendant resisted a recovery on the grounds that the mother having survived she alone could sue on the policy, and that there had been a breach of warranties by reason of certain false statements contained in the application. The Court of Appeals, in an opinion by Mr. Justice Robb, while sustaining the right of the administrator to sue on the policy, any recovery being for the benefit of the mother of insured, holds that the plaintiff's evidence showed that statements had been made by insured which constituted a breach of warranty, and there having been no waiver by defendant of such breach, the trial court properly directed a verdict in its favor. The judgment was affirmed.

### Condemnation Proceedings; Computation of Time for Instituting Suit.

In *Macfarland v. Moore* the appeal was from a judgment dismissing a petition of the Commissioners of the District for the condemnation of certain lands for extension of a street. The act of Congress authorizing the proceeding provided that it should be brought within thirty days after its passage. The day of the passage of the act was January 9, 1907, and the petition was filed on February 8, 1907. Certain owners of the lands sought to be condemned filed a motion to dismiss the petition on the grounds, among others, that the proceeding should have been brought in the name of the District, and that it was not filed within the time authorized in the act. The Court of Appeals, in an opinion by Mr. Justice Robb, while sustaining the power of the Commissioners to bring the suit, holds, affirming the court below, that the limitation fixed by Congress commenced to run January 9th, the day of the passage of the act, and expired on February 7th, the day before the petition was filed, and that therefore the petition was properly dismissed as not having been filed within the time limited by the act. For opinion below, see 36 Wash. Law Rep., 16.

**Contract's; Breach of Warranty; Directing Verdict.**

In *Rondinella v. Southern Railway Company* the appeal was from a judgment of the court below in an action to recover the purchase price of an electric photographic printing machine. It appeared the plaintiff knew the purpose for which the machine was desired, and that it was sold subject to approval by defendant, and to its being found to work to defendant's satisfaction; that defendant, not being satisfied with its operation, had declined to complete the purchase and returned the machine to plaintiff. The trial court directed a verdict for defendant upon which judgment was entered; and this judgment was affirmed by the Court of Appeals in an opinion by Mr. Justice Van Orsdel.

**Appeal dismissed for Incompleteness of Record.**

In *Cosey v. Smith*, the appeal was dismissed, in an opinion by Mr. Justice Robb, on the ground that the record was so incomplete as to present nothing for review.

**Criminal Law; Appeal by District from Judgment of Acquittal Dismissed.**

In *District of Columbia v. Burns*, the appeal was from a judgment of the Police Court acquitting the defendant of a violation of the act of 1898, relating to the sale of adulterated foods, on the ground that that act had been repealed by the Pure Food Act of June 30, 1906. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, while intimating that the view of the law taken by the Police Court was erroneous, holds that it was without jurisdiction to entertain the appeal, for the reason that the defendant having been acquitted, could not be retried for the same offense, so that even if the judgment of the Police Court should be held erroneous it could not be vacated and a new trial ordered. The appeal was therefore dismissed.

**Adverse Possession; Evidence; Enclosure.**

In *Meyers v. Mayhew*, the suit was in equity to remove cloud from and perfect title by adverse possession. The court below held that the proof of adverse possession was sufficient to vest title in the plaintiff and entered a decree to that effect. The evidence showed that plaintiff's predecessors in interest had been in possession of the land for more than twenty years prior to 1862, during which time it was enclosed, but subsequently this fence had been removed and it had not thereafter been enclosed, though continuous acts of possession and user after 1862, considering the nature and uses of the land, were shown. The Court of Appeals, in an opinion by Mr. Chief Justice Shepard, affirms the decree, overruling contentions by the appellant that the plaintiff had an adequate remedy at law in an action of ejectment, that he was estopped from asserting title by adverse possession by his acquiescence in the buying, selling and encumbering of the property by the holders of the legal title since 1862, and that he had been guilty of laches.

**Patent Appeal Decided.**

*Horton v. Zimmer*. Decision of Commissioner of Patents affirmed. Opinion by Mr. Justice Robb.

**Court of Appeals of the District of Columbia**

**JAMES R. GARFIELD, SECRETARY OF THE  
INTERIOR OF THE UNITED STATES,  
APPELLANT,**

**v.**

**EDGAR T. GADDIS.**

**ATTORNEYS; DISBARMENT BY SECRETARY OF INTERIOR;  
DUE PROCESS OF LAW.**

In mandamus proceedings to compel the Secretary of the Interior to vacate an order disbarring the relator and to restore him to practice before the department, it appeared that charges of improper, unprofessional, and illegal conduct were preferred against relator by the Commissioner of Pensions. Certain depositions taken by the Commissioner of Pensions, without notice to relator, were used by him in making his recommendation to the Secretary and by the latter in reaching his conclusion; but copies of these depositions were furnished relator by the Commissioner of Pensions, and were submitted by relator in his statement in answer to the charges and commented upon by him in his argument, no objection being made by him to the consideration of such depositions. Held, that the taking and consideration of the depositions under such circumstances, did not amount to a denial of due process of law; and the Secretary of the Interior having acted within his jurisdiction, the exercise of his judgment and discretion can not be reviewed by the courts.

No. 1948. Decided November 6, 1908.

**APPEAL** by Secretary of the Interior from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,619, granting a writ of mandamus to compel reinstatement of an attorney disbarred for alleged unprofessional conduct. Reversed.

Mr. D. W. BAKER, Mr. STUART McNAMARA, and Mr. F. W. CLEMENT for the appellant.

Mr. E. C. BRANDENBURG and Mr. F. W. BRANDENBURG for the appellee.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order directing a writ of mandamus to issue to James R. Garfield, Secretary of the Interior, commanding him to vacate an order made May 1, 1908, disbarring Edgar T. Gaddis, and to restore him to practice before the Department and its bureaus and offices.

The petition on which this order was made, alleged the admission of relator to practice before the Department, the presentation of charges against him, his answer thereto, and the proceedings therein, and charged that he was found guilty of a different offense from that charged, and was denied due process of law in the matter of taking testimony and hearing.

It appears from exhibits attached to the petition and from the answer of the respondent, that on April 13, 1907, the Commissioner of Pensions, after an investigation of the practices of attorneys before his bureau, served upon relator a charge in writing to the effect that he had been guilty in improper, unprofessional, and illegal conduct of connection with the bounty land warrant of one Andrews. The specific charges were in substance: That relator, as attorney for Andrews, filed the claim on June 24, 1904. That the warrant was allowed September 16, 1904, and delivered to relator October 18, 1904. That after the receipt of the warrant, relator wrote to Andrews, who was a blind man living in Lowell, Mass., that if he did

not wish to locate the land he would try to get some one to take it off his hands. That Andrews replied to the effect that, being blind, he could not locate the warrant and would sell the same. That thereupon relator wrote to Andrews offering to buy the warrant for \$160, and sending him a blank assignment for execution. That this was executed and returned with request to deduct the fee of \$25 and remit balance. That on February 25, 1905, relator delivered the warrant and the assignment, in which no name of assignee had been entered, to Thomas R. Harney, receiving \$500 therefor. Thirty days were given to answer the charge.

Relator made reply thereto April 18, 1907, denying that he had been guilty of unprofessional or illegal conduct in the matter. He averred that he notified Andrews of the allowance of the claim and asked for his fee of \$25. That Andrews wrote expressing his disappointment as he supposed he would receive money instead of land. That he wrote to Andrews, in reply, the following letter on September 28, 1904:

"MR. JOHN ANDREWS,

91 Concord street, Lowell, Mass.

"DEAR SIR: It is proper to explain in response to your letter that a land-warrant is simply a right on the part of the beneficiary, or his assigns to search out a tract of unoccupied Government land not already preempted by settlers, and by virtue of the land-warrant, acquire fee-simple title thereto.

"The expense of locating to the ordinary citizen with no facility for doing so would ordinarily make it unprofitable to undertake such a task, not to speak of reducing of land to cultivation. The Government does not pay money in lieu of bounty land as you appear to have erroneously supposed, so that if you reduced to cash your warrant must be sold.

"The first step, however, is to have the warrant actually issued ('delivered' is the term which should have been used), and, that you can have done by signing your name to the enclosed request. Two persons must attest your signature. (If convenient you might also acknowledge the signing before a notary public.) He could simply certify over his seal and signature, 'Personally appeared John Andrews and acknowledged the signing of the foregoing instrument.'

"Respectfully,

"(Signed)

EDGAR T. GADDIS."

That over a week having elapsed without hearing from Andrews, and being anxious about his fee, relator wrote saying that if it would be any accommodation to him he would purchase the warrant for \$160. By way of defense, in this connection, he stated that his experience with warrants was limited to this one case; that he was ignorant of the market value of warrants and of how and where to dispose of them; that calling at the general land office he learned that the Government appraisement was \$1.25 per acre, and he thought he would assume the risk of offering \$1 per acre. He next answered to the effect that he had received a letter from Andrews accepting the offer of \$160 and enclosing the formally executed order to the Pension Office to deliver the warrant to relator. This was presented and the warrant received. Then followed other correspondence relating to the execution of the assignment and transmission and receipt of the \$160 less the \$25

fee retained. His defense then is stated that his service as attorney ceased with the allowance of the warrant, and that he had the same right as any other person to purchase the same from his former client. That he had faithfully discharged his professional duties; that the transaction was a bona fide purchase and sale, and not by way of procuring additional compensation for his services. He also stated that about four months later he sold the warrant to Harney, but did not say what he had received therefor. In a later statement submitted, he stated the purchase price paid by Harney at \$528. The Commissioner of Pensions took the statements of Andrews and his son, who had conducted the correspondence, and remitted the same with his report recommending disbarment, to the Secretary.

This evidence was taken without notice to relator, but copies of the same were given to him, by the Commissioner. While the report was pending before the Secretary, the relator, about July 18, 1907, filed with the Secretary, a copy of the entire proceeding, including the statement of testimony aforesaid. In his statement submitted to the Secretary this testimony is copied and commented on.

The answer of the Secretary to the petition is lengthy, and denies specifically the charge that relator was not given a full and fair hearing. We extract therefrom the following as bearing particularly upon the questions to be determined:

"Respondent admits the averment of the said paragraph to the effect that the relator had been shown and permitted to make copies of the papers in these proceedings, including the depositions of John Andrews and his son, George F. Andrews, the reports of Special Examiners Smith and Freeman, and even the report of the chief of the Miscellaneous Division of the Department of the Interior and of all the other papers of any kind whatsoever in the case. After considering the record thus made, the Commissioner of Pensions, in the exercise of his discretionary duty under the act of July 4, 1884, and the rules and regulations prescribed by the Secretary of the Interior, did, on the 17th day of June, 1907, recommend to the Secretary of the Interior that the relator be disbarred from practice before the Department. The relator conceded the jurisdiction of the Secretary in the premises and appeared before him, presenting in his own behalf his printed brief and also the affidavit of Addie W. Gaddis relative to the relator's alleged lack of knowledge as to the value of the said bounty land warrants at the time when he persuaded his client, John Andrews, to assign to him, the relator, for an inadequate consideration, the said land warrant which he had procured for said Andrews as attorney, and thereafter sold the said land warrant with a profit to himself of \$340. The said relator admitted the act charged in the citation, but denied that the act constituted an offense. The said relator did not dispute the depositions taken by the said special examiner, but referred to the same and quoted from the same in his argument before the Secretary of the Interior. The plea of the relator in his hearing was that he did not know the value of the land warrant, and, therefore, did not mislead his client intentionally, and that the case was an isolated one—the only one he ever had—and that severe punishment should not be visited upon him on these accounts. The relator specifically admitted



the commission of the act charged in the citation, but contended at the hearing that the said act did not make out an offense, because he, the relator, did not have knowledge of the value of the said land warrant, and, in all events, that the case being the solitary one in his career of sixteen years' practice, he should be dealt with leniently by the Secretary. The sole question, therefore, before the Secretary was as to the character and circumstances of the act agreed to have been done, as to the legal import of the said act, and as to whether it constituted an offense under the law. Full argument was made by relator, and full hearing was given to relator, and the proceedings continued from the 15th day of June, 1907, when the Commissioner of Pensions recommended the disbarment, to the 1st day of May, 1908, when the Secretary of the Interior decided the matter and ordered the disbarment.

"After a full consideration of the case as presented by the Commissioner of Pensions, wherein he referred to the Andrews depositions, of the recommendation by said Commissioner of Pensions, of the response of the relator to the citation, of the evidence offered by the relator in his defense, of the admissions made by relator as to the committing of the acts themselves set out in the citation, and of the arguments presented in his behalf, the said Secretary of the Interior, in the proper exercise of the duty imposed upon him by the act of July 4, 1884, on the 1st day of May, 1908, issued an order disbarring the relator from practice before the Department of the Interior and its bureaus on the ground that after careful consideration of the said recommendation of the Commissioner of Pensions, the testimony in the case, and the arguments in the relator's behalf, he, the said Secretary of the Interior, was convinced that the relator entered into a contract with one John Andrews for the purchasing of a military bounty land warrant clearly incompatible with the said relator's duties as the attorney of the said Andrews and with the laws, rules, and regulations under which the said relator was recognized and permitted to represent claimants before said Department and its bureaus, and so decided and thereupon issued the order of disbarment aforesaid.

"Respondent denies every averment in the petition that relator was not granted a full, fair, and legal hearing on the charge in the citation. He denies that relator was not allowed to offer any evidence that he saw fit; he denies that there was any ex parte hearing; he denies that the relator was denied the right of argument, and denies that he was not offered the opportunity to be heard, and denies absolutely that the relator was not shown every statement, deposition, report, or other paper in the proceedings, and given the right to answer the same in any way he saw fit in the long protracted period above set forth."

"The respondent admits the averment in the seventh paragraph that the only military bounty land warrant known to have been issued in a claim in which the relator was the attorney was the warrant of the said John Andrews, and that the relator filed fee contracts in such case under the provisions of the act of July 4, 1884, and for that reason was entitled to a fee of \$25 upon the allowance of said claim. The respondent admits that the said John Andrews desired to sell warrant which was so

issued to him, but before said warrant had been surrendered to the said John Andrews the relator, while the attorney of the said John Andrews, led his said client to believe that the warrant was worth the sum of one hundred and sixty dollars (\$160), when in fact said warrant was worth not less than five hundred and twenty-six dollars (\$526). The relator, on the 18th day of October, 1904, received the said warrant of the said John Andrews, as the attorney of said John Andrews, from the Commissioner of Pensions. The relator thereupon caused to be endorsed upon said warrant a form for its assignment in blank and forwarded the said warrant to his said client with instructions as to how the said assignment should be executed, and the said assignment was executed in conformity with the relator's instructions, on the 21st day of October, 1904, and thereafter the relator paid to his said client, John Andrews, the sum of one hundred and thirty-five dollars (\$135) in consideration of having executed and delivered said assignment, deducting from the one hundred and sixty dollars (\$160) which the said relator offered in consideration of the assignment of said warrant the sum of twenty-five dollars (\$25), the attorney's fee to which the relator was entitled under the provisions of the act of July 4, 1884. On the 5th day of February, 1905, the relator sold said warrant to Thomas R. Harney, a member of the firm of Milo B. Stevens & Co., of Washington, D. C., for the sum of five hundred and twenty-six dollars (\$526). At the time that the said warrant was so procured by the relator to be assigned in his behalf for the sum of one hundred and sixty dollars (\$160) and was so sold by the relator for the sum of five hundred and sixty dollars (\$560), there were various persons and firms in the city of Washington, District of Columbia, where the relator resides, who were dealers in such warrants, and the actual value of such warrants could have been readily ascertained from said dealers. It was the duty of the relator to have ascertained the actual value of such warrants before attempting to advise his said client, John Andrews, in the premises, and to have exercised at least the same degree of diligence in behalf of his said client as the relator did in his own behalf when he sold the said warrant to Thomas R. Harney at the rate of three dollars and twenty-five cents (\$3.25) for each acre represented thereby.

"The respondent denies the averment in said paragraph that the relation of attorney and client had ceased to exist between the relator and his said client, John Andrews, at the time that the contract for sale of said warrant was entered into.

"Respondent denies the averment in the said seventh paragraph of the petition whereby it is sought to be inferred that the reason for the difference in the price at which relator procured the warrant to be assigned to him and the price at which he thereafter sold the said warrant to Thomas R. Harney was due to a recent decision of the Land Department, which caused the said warrants to rise in value and which said decision was afterwards reversed, thereby causing the warrants to recede to their former position in price. The fact is that the decision referred to is what is known as the Maginnis case, and was made on February 5, 1902 (31 Land Decisions, 232), two years before the time that relator procured the assignment of the warrant to himself.

"Respondent specifically denies any allegation

contained in this paragraph, or in any other part of the petition, that no improper representations were made by the relator to his client, and that a fair and adequate price was paid by the relator to his said client in consideration of the assignment of his said client, which the said relator had procured for him, to the relator."

Demurrer to this answer was sustained and the final order entered thereon, July 6, 1908, directed the mandamus to issue as prayed. An appeal was taken from that order, by direction of the Departments of the Interior and of Justice, and has been prosecuted without bond. Special appeals were also taken from later orders directing the issue of the writ unless appellant shall file a supersedeas bond in the sum of \$7,000. This case was submitted at the same time with that of *Garfield v. Stevens Co.*, No. 1941, and *Garfield v. Spalding*, No. 1951, and all were argued together upon motions to dismiss the several appeals, and upon the merits. The motions to dismiss are overruled for reasons given at length in the opinion delivered in *Garfield v. Stevens*, No. 1941; and the general questions raised on the merits are also settled by the opinion in that case.

There is but one substantial difference between the facts in that case and this, which needs to be considered. It appears in this case that the depositions of Andrews and son, taken by the Commissioner of Pensions, without notice to relator, were used by him in making his recommendation to the Secretary, and by the latter in coming to his conclusion. The use of such testimony without the knowledge, or over the protest of the relator would undoubtedly amount to a denial of a necessary element in a hearing that responds to the constitutional requirement of due process of law. But it appears that copies of these depositions were delivered to the relator by the Pension Commissioner and that they were submitted by him in his statement and argument subsequently made before the Secretary pending the consideration of his case. As stated in the Secretary's answer, the relator not only did not object to the consideration of this testimony, but also commented upon the same in his argument. This answer is admitted by the demurrer to be true; and it may be added that it is borne out by an inspection of the said statement and argument which was filed as an exhibit to the petition. There had been no meeting of relator and Andrews. Consequently, the entire transaction was contained in their correspondence. This correspondence had been stated or copied in relator's answer to the charge, and showed all of the facts of the transaction. It is probable that relator's failure to object to the consideration of the depositions was due to this fact. No matter what the reason may have been he did not object to the testimony and discussed it in his final statement of defense. If this were an appellate proceeding to review the decision of the Secretary in the premises, on the ground of the admission of incompetent testimony, the appellant would, under the conditions stated, be estopped by his own action to raise the question. We can not, therefore, in a case where we have no such supervisory power, say that the taking and consideration of the testimony, under such circumstances, amounted to a denial of due process of law, and authorized the intervention of a court of law. The Secretary, having jurisdiction of the case made in

conformity with the law and the regulations governing the same, and having acted within that jurisdiction, the exercise of his judgment and discretion can not be questioned by a court having no supervisory jurisdiction.

For the reasons here given and others to be found in the opinion in No. 1941, the order will be reversed with costs, and the cause remanded with direction to dismiss the petition.

Reversed.

ARTHUR BRISCOE, APPELLANT,

v.

HENRY B. F. MACFARLAND ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

CONDEMNATION PROCEEDING; ORDER CONFIRMING VERDICT NOT VOID FOR FAILURE TO SUMMON NEW JURY, BUT VOIDABLE MERELY; ESTOPPEL.

In proceedings for the condemnation of land for the extension of Rhode Island avenue, pursuant to the act of March 3, 1899, exceptions were filed by appellant to the verdict of the jury of seven; but the trial court, instead of summoning a new jury of twelve, as required by sec. 208 R. S. D. C., overruled the exceptions and confirmed the verdict. An appeal was taken by appellant, which was subsequently dismissed. Thereafter, appellant filed the present suit to enjoin a sale of his lot for default in payment of the assessment and to vacate the assessment. Held, that while the trial court acted contrary to law in not ordering a reassessment by a new jury, its order of confirmation was not for that reason void, but erroneous and voidable merely; and the appeal from such order of confirmation having been dismissed, that order must be regarded as in force and as having the effect of terminating the suit or proceeding, and to conclude the right of appellant to maintain this suit to vacate the assessment against his property.

No. 1886. Decided November 16, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,239, dismissing a bill to enjoin a sale of land for default in payment of special assessment, etc. Affirmed.

Mr. SAMUEL MADDIX and Mr. H. P. GATLEY for the appellant.

Mr. E. H. THOMAS and Mr. H. P. BLAIR for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from a decree dismissing the bill of appellant to enjoin the sale of a lot of land in the city of Washington under a special assessment for benefits in improving a street, and to vacate said assessment.

The cause was submitted upon bill, answer, and an agreed statement of facts.

The necessary facts are as follows: Plaintiff was, on and before March 8, 1899, the owner of lot 15, in block 7, of the subdivision known as Bloomingdale. On that day the Commissioners of the District began a proceeding in the District Court for the condemnation of the land necessary to the extension of Rhode Island avenue, under authority of an act of Congress approved March 3, 1899. The act provided that one-half of the amount awarded as damages for the land condemned shall be assessed against certain lands to be benefited thereby, lying on each side of said avenue, between

certain named streets, and other designated squares and lots, including plaintiff's lot. These assessments when confirmed by the court were declared a lien on the lands severally assessed, to be paid in five equal instalments, and collected as special improvements are collected, under other laws; that is to say, by sale by the collector of taxes. A jury of seven was empaneled to assess the damages and benefits. The verdict returned assessed \$1,000 against plaintiff's lot. Plaintiff was not personally cited to appear. The notice given was by publication to all property owners, as provided by law. A rule was issued to all parties whose lands had been assessed to show cause why the verdict should not be confirmed. Plaintiff appeared and filed objections to the award as unconstitutional, unjust, etc. The court overruled the objections and confirmed the verdict. Plaintiff appealed therefrom to the Court of Appeals, but subsequently dismissed the same. The collector advertised the lot for sale for the entire amount of the assessment, interest, and costs of advertising. In the meantime Congress corrected the ambiguity in the law as to collection in five equal instalments requiring the same to be collected in five equal annual instalments. An order restraining the sale was issued on the filing of the bill, April 14, 1902. The defendant answered the bill, and no further proceedings were had until July 6, 1907, when, after hearing upon bill, answer and agreed statement of facts, the restraining order was discharged, and the bill dismissed.

1. The objection to the constitutionality of the act of Congress under which the condemnation of lands and the assessment of benefits were effected in this case is untenable. Congress had the power to order the extension of the avenue, the condemnation of the lands necessary therefor, the designation of the taxing district for the assessment of benefits, and the giving of notice to the owners of land therein by publication. *Wight v. Davidson*, 181 U. S., 371, 378, 381, 382; *Bauman v. Ross*, 167 U. S., 548; *Buchanan v. Macfarland*, 31 App. D. C., 6, 18; 36 App. D. C., 215. There is nothing in the record to indicate that the amount assessed against plaintiff's lot was actually in excess of the benefits accruing from the extension of the avenue, so as to bring the same within the principle governing the later case of *Martin v. D. C.*, 205 U. S., 135, 140; 35 Wash. Law Rep., 173.

2. The serious question in this case has its origin in the order of the District Court, in the condemnation proceeding, confirming the verdict returned therein, notwithstanding objections thereto had been filed by the plaintiff and others whose lands were affected.

As that proceeding was expressly governed by the procedure prescribed in several sections of the Revised Statutes of the District, the court should have vacated the verdict and ordered a jury of twelve to be summoned to make a new assessment. That was its duty under section 263. *Brown v. Macfarland*, 19 App. D. C., 525, 581.

The contention, founded on the failure to perform this duty, is that the court had no power to do aught else than to vacate the verdict, discharge the jury, and summon a new jury, and that, therefore, its order of confirmation is void. In support of this contention, two cases are cited wherein expressions are used indicating that such is the result. *Brown v. Macfarland*, 19 App. D. C., 525, 531; 30 Wash. Law Rep., 235; *Macfarland v.*

*Saunders*, 25 App. D. C., 438, 442; 33 Wash. Law Rep., 393. In discussion of a like contention in the recent case of *Buchanan v. Macfarland* (31 App. D. C., 6, 19; 36 Wash. Law Rep., 215), it was said: "The expressions to the effect that the order of confirmation in opposition to the objections was null and void, must be considered with reference to the questions actually presented for decision. In the first of those cases the objectors appealed from the order confirming the verdict notwithstanding their objections. In the second case the order confirming the verdict had been set aside, on petition of the objectors, in so far as it applied to the assessment of benefits, but confirmed as regards the assessment of damages for land taken or damaged. The Commissioners of the District appealed from this order, which was affirmed. The case at bar stands on entirely different grounds. It is neither an appeal from an order overruling exceptions and confirming the verdict, nor a direct proceeding to set aside the order of confirmation and open the case for determination by another jury. We think the order of confirmation was not absolutely void as against their attack. The appellants were not among the objectors, and it may be presumed that the objectors withdrew or waived their objections and accepted the result as they had a right to do. See *Macfarland v. Byrnes*, 19 App. D. C., 531, 538, decided on the same day with *Brown v. Macfarland*, supra."

It is to be remembered, however, that in the case at bar the party had offered objections to the verdict, which were not withdrawn or waived, and there can be no presumption, therefore, in favor of the regularity of the order of confirmation as in the case quoted from. This difference between the two cases presents a good reason for the reconsideration of the question. It is conceded that section 263, made it the duty of the court, when the objections were offered to the verdict, to empanel a new jury of twelve for the purpose of reassessing the damages and benefits. It defines the duty of the court, but does not, in terms at least, declare that the court shall have no other or further jurisdiction in the premises; nor does it declare that such an order of confirmation shall be void, though as we have seen in the cases referred to above, such an order of confirmation has been referred to as void. In its strict legal sense, "void" means without force or effect, something that does not bind or conclude anybody, or serve to convey or divest a right. "Voidable" means that which has some force or effect, but which may be set aside or annulled for some error or inherent vice or defect. The word void is frequently used in statutes, contracts, and other instruments without regard to its strict legal signification. *Ewell v. Daggs*, 108 U. S., 143, 148. That case depended upon the construction of a statute. Mr. Justice Matthews, speaking for the court, said: "It is quite true that the usury statute referred to declares the contract of loan, so far as the whole intent is concerned, to be 'void and of no effect.' But these words are often used in statutes and legal documents, such as deeds, leases, bonds, mortgages, and others, in the sense of voidable merely—that is, capable of being avoided—and not as meaning that the act or transaction is absolutely a nullity, as if it had never existed, incapable of giving rise to any rights or obligations under any circumstances. Thus we speak of conveyances void as to creditors, meaning that

creditors may avoid them, but not others. Leases which contain a forfeiture of lessees' estate for non-payment of rent, or breach of other conditions, declare that on the happening of the contingency the demise shall thereupon become null and void, meaning that the forfeiture may be enforced by reentry at the option of the lessor. It is sometimes said that a deed obtained by fraud is void, meaning that the party defrauded may at his election treat it as void." See, also, *Tolbert v. Horton*, 31 Minn., 518, 520.

It may be added that the word is not infrequently used in judicial opinions without special regard to its strict sense and the distinction between it and "voidable," where the subject-matter did not necessarily demand exactness of definition or limitation. *Somes v. Brewer*, 2 Pick., 184, 191. It is a familiar principle that the judgment of a court having no jurisdiction of the subject-matter is void in the strict sense of the word. It binds or concludes no one. No rights can be acquired under, or divested by it. It is in fact no judgment at all. But when a court has such jurisdiction and proceeds to render a judgment contrary to law or to its duty in the premises, that judgment is erroneous only—that is to say, voidable, but not void. As said by Mr. Justice Miller in *Ex parte Lange* (19 Wall., 163, 175): "A judgment may be erroneous and not void, and it may be erroneous because it is void. The distinctions between void and merely voidable judgments are very nice, and they may fall under the one class or the other as they are regarded for different purposes." In a recent case it was said by Mr. Justice Holmes: "No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty of the court. Under the common law it is the duty of a court of general jurisdiction not to enter a judgment upon a parol promise made without consideration; but it has power to do it, and, if it does, the judgment is unimpeachable, unless reversed. Yet a statute could be framed that would make the power—that is, the jurisdiction of the court—dependent upon whether there was a consideration or not. Whether a given statute is intended simply to establish a rule of substantive law, and thus to define the duty of the court, or is meant to limit its power, is a question of construction and common sense. Where it affects a court of general jurisdiction and deals with a matter upon which that court must pass, we naturally are slow to read ambiguous words, as meaning to leave the judgment open to dispute, or as intended to do more than fix the rule by which the court should decide." *Fauntleroy v. Lum*, 210 U. S., 230, 234.

The act of March 3, 1899 (30 Stat., 834), adopted only a part of chapter 11, R. S. D. C., which provided for the condemnation of lands for new public roads in the District. No provision was therein made for the assessment of benefits. The District authorities were vested with full power in such cases to determine upon the establishment and location of such new roads. In case of the failure of landowners to give the necessary land or to agree upon the damages, the Commissioners were authorized to direct the marshal to summon a jury of seven to assess the same. In case of objection to the verdict returned, a new jury of twelve was to be summoned, whose verdict was directed to be re-

corded as final and conclusive. The intervention or supervision of no court was provided for. The growth of the city of Washington since that time has rendered it important to extend the streets of the city throughout the adjacent country in order to meet the new conditions and preserve conformity with the general plan; and Congress has met the demand, from time to time, by providing for the necessary extension of streets and avenues, and the assessment of benefits in part payment for damages incurred. The act of March 3, 1899 (30 Stat., 834), ordered the extension of Rhode Island avenue, and provided that one-half of the damages incurred in the necessary condemnation of the land therefor, should be assessed against other property within certain limits as benefits. Instead of calling a jury themselves, under the old statute relating to roads, the Commissioners were required to "commence suit" for the condemnation of the land. No court was designated, as in some other acts; but, as the Supreme Court of the District was the only court in which a suit could be commenced it was necessarily meant, and the proceedings were begun therein. The jury of seven was ordered by that court and proceeded to perform their duties under its supervision. It is true that under the procedure adopted from the Revised Statutes, the court should have ordered a new jury, when objection was made to the verdict of the first. And, although section 264 of the old statute declared that the second verdict should be final and conclusive, the effect was qualified by section 5 of the act of 1899, which requires confirmation by the court before it could take effect. The power to confirm necessarily included the power to set aside and order the assessment to be made again. Nor would the order of confirmation of a second verdict be final and conclusive, because under the general law creating the Court of Appeals an appeal lies thereto from any final order of the Supreme Court of the District, or any justice thereof, unless such right of appeal be negated by the terms of the particular act. No such effect can be attributed to the act under consideration. Having to construe all of the statutes referred to, we are of the opinion that the jurisdiction of the Supreme Court of the District over the subject-matter of the suit did not cease with the return of the verdict and the presentation of the objections thereto. While it acted contrary to law in not ordering the reassessment by a new jury, its order of confirmation is not void, but erroneous and voidable merely. Appellant was in court and gave notice of appeal from the order, and took his appeal. Had he prosecuted the same the result would have been the reversal of the order for the error committed. Instead of prosecuting, he voluntarily dismissed his appeal. The order of confirmation must, therefore, be regarded as in force and having the effect to terminate the suit or proceeding, and to conclude the right of the appellant in this new proceeding in equity.

3. The foregoing conclusion renders it unnecessary to consider whether it would be proper for a court of equity to entertain jurisdiction of a bill to remove a cloud from a title, created by the advertisement of property for sale under a lien founded on a void judgment.

The decree dismissing the bill will be affirmed with costs.

Affirmed.

## Court of Appeals of the District of Columbia

DENNIS L. SHEA, APPELLANT,

v.

HENRY B. F. MACFARLAND ET. AL.

No. 1885. Decided November 16, 1908.

APPEAL by complainant from a decree of the Supreme Court of the District of Columbia, in Equity, No. 23,238, dismissing a bill for an injunction, etc. Affirmed.

Mr. SAMUEL MADDOX and Mr. H. P. GATLEY for the appellant.

Mr. E. THOMAS and Mr. H. P. BLAIR for the appellees.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This case was submitted with No. 1886, *Briscoe v. Macfarland et al.*, and presents the same questions. For the reasons given in the opinion in that case, the decree will be affirmed with costs.

Affirmed.

## Supreme Court of the District of Columbia

LOUIS J. RAUEL ET AL., COMPLAINANTS,

v.

GOTTFRIED F. MAYER ET AL., DEFENDANTS.

### PARTY WALLS; MUTUALITY OF BENEFIT.

1. The central idea as to the meaning of a party-wall would seem to be that of mutuality of benefit.
2. Complainants were the owners of a certain lot in this District, with a right of way for alley purposes over the rear two feet six inches of an adjoining lot, and subject to a like right of way over the rear two feet six inches of their lot for the benefit of other lots in the same subdivision. The lot was improved by a brick residence. Defendants owned a lot in the same square adjoining complainants' property on the rear, and in undertaking the building of a bakery thereon encroached on that part of complainants' property embraced in said alley about six inches, claiming the right to build a party-wall at that point, and also that they had permission of the building inspector to so place the wall. *Held*, that as complainants' lot was already built upon and they were bound by the covenants of their deed to dedicate forever the rear two feet six inches of their lot for alley purposes for the benefit of other owners in said square, the element of mutuality was lacking, and an injunction granted to restrain the building of the wall at that point.
3. The permit of the building inspector to use a part of complainants' lot for the purpose of a party-wall was without authority of law and therefore immaterial as affecting complainants' right to an injunction.

No. 28,101, Equity. Decided November 20, 1908.

Hearing on bill in equity for an injunction. Injunction pendente lite granted.

Mr. W. J. LAMBERT and Mr. R. H. YEATMAN for the complainants.

Mr. A. H. BELL for the defendants.

Mr. Justice BARNARD delivered the opinion of the Court:

The complainants, on April 1, 1901, purchased lot 75 in Joseph Paul's subdivision, in square 11, in Bloomingdale, County of Washington, District of Columbia, together with a right of way for alley purposes over the rear two feet six inches by the width thereof of lot 74 in said subdivision, and

subject to a right of way for alley purposes over the rear two feet six inches by width of said lot 75, for the use and benefit of lots 76, 77, and 78 of said subdivision, as shown by a deed to them, recorded April 9, 1901, in liber 2550, folio 454 et seq. of the land records of this District.

They are in possession of the said property, and have been since the date of purchase.

Complainants aver in their bill that October 14, 1908, the defendant, Mayer, the owner of lot 80 in the same square, which lot has a frontage on North Capitol street, and the rear of which extends back along the rear line of complainants' lot, began to excavate for the erection of a bakery upon the rear part of his lot, and by his co-defendant, Getz, as contractor, started to build thereon, encroaching six or six and a half inches on complainants' ground, being part of the land over which the right of way is given by the conveyance aforesaid; and that although warned by the complainants, the defendants proceeded with said work, laying the foundations for the bakery upon the portion referred to as complainants' property, and that said foundations have so narrowed or curtailed the space provided for the alleyway over complainants' property that it is impossible to open the rear gate leading out from complainants' yard, or to properly use the said alleyway.

Complainants aver that they have made complaint to the Commissioners of the District, but have obtained no relief from them.

They further state that their lot is improved by a dwelling house, No. 10 R street N. W., fronting on on R street and extending back about sixty-two feet, the whole lot being eighty-three feet deep, and that the rear part back of the house, and up to the two feet and a half alleyway, has been fenced, so as to leave the two feet and a half alleyway open, and it is a part of such space and ground so fenced off and left open that the defendants have encroached upon for the said building of said bakery without the consent of complainants and against their will; and that if they are allowed to continue the said building it will be to their great and irreparable damage, for which they have no remedy at law; and they therefore pray for an injunction and a mandatory decree to prevent the completion of the said building on their land, and to require them to tear down and destroy so much of their wall as may be erected on the lot of the complainants.

The defendants make joint and separate answer to the bill, in which they admit the building of the wall on the line between the rear end of the complainants' lot and along the side of the rear portion of the defendants' lot, and that the wall projects six and a half inches over such dividing line; that they had the permission of the surveyor and building inspector to so place the wall, and they claim the right to build a party-wall at said point, notwithstanding the said two feet and a half strip may have been dedicated for a right of way for the use of the lots mentioned in complainants' bill.

The record shows that after the bill was filed, a rule was issued requiring defendants to show cause why an injunction pendente lite should not be granted, and before the hearing on that rule, the complainants called the attention of the court to the fact that pending such hearing the defendants were prosecuting the work of erecting such building vigorously; and on such representation the

court issued a restraining order, and fixed a day for an early hearing, and the cause now comes on for hearing as to the continuance of that restraining order pendente lite.

The question raised by the pleadings and arguments is this: Can the defendant Rael have the use of six and a half inches of the private alleyway set apart by the owners of the lots 74, 75, 76, 77, and 78, in the said square, for the purposes of a party-wall?

The definition of a party-wall given in the building regulations is as follows:

"A wall built upon the dividing line between adjoining premises for their common support."

Under some of the authorities, the term "party-wall" is said to express a meaning rather popular than legal. It is defined as a wall between adjoining estates, which is used for the common benefit of both, chiefly in separating the timbers used in the construction of contiguous buildings on such estates.

Other authorities hold that a party-wall is one built at joint expense and upon joint ground, owned in common, so that each adjoining proprietor has an undivided interest in every part of the wall, and in the ground on which it stands. 22 Am. & Eng. Ency. (2d Ed.), 237 et seq.

The Code of this District (section 1586) provides, that whenever the wall of a house previously erected by any proprietor shall appear to stand on the adjoining lot of any other person, in part less than seven inches in width, such wall shall be considered as standing altogether on the land of such proprietor, who shall pay to the owner of the lot on which the wall may stand a reasonable price for the ground so occupied, to be decided by arbitrators or a jury, as the parties interested may agree, and section 1587 provides, that if the wall of any house already erected covers seven inches or more in width of the adjoining lot, it shall be deemed a party-wall, according to the regulations for building in the District, and the ground so occupied more than seven inches in width shall be paid for as provided in the preceding section.

Section 1583 makes it the duty of the surveyor to ascertain and certify, and put on record, at the request and expense of any person interested therein, the fact of the occupation of land by a party-wall, as mentioned in the preceding section.

Section 62 of the present building regulations, approved by President Washington, October 17, 1791, is still recognized as in force. This provides that the person, or persons, appointed by the Commissioners to superintend buildings, may enter upon the land of any person to set out the foundation and regulate the walls to be built between party and party, as to the breadth and thickness thereof, which foundations shall be laid equally upon the lands of the persons between whom such party-walls are to be built, etc.

It was held, under this regulation, on April 14, 1841, by the old Circuit Court of this District, that if the owner of a lot in Washington had already built a frame house thereon, covering his lot, that the adjoining owner could not tear away the side of his frame building for the purpose of erecting a brick building, and use the necessary space for a party-wall, and that the building regulations applied only to vacant lots.

**Kraft v. Stott**, 1 Hayward & Hazelton's Circuit Court Reports, 33.

The present building regulations, however, by section 71, provide that the builder of a brick house adjacent to a frame house, has the right to cut away the latter sufficiently to place a party-wall equally upon his own and adjoining land; and section 72 provides that such builder shall make good all damages occasioned thereby to the frame house.

The central idea as to the meaning of a party-wall would seem to be that of mutuality of benefit; and if the court is correct in assuming that a party-wall must be for the present or prospective benefit of the adjoining owners, then the question is, does the present case present such mutuality, or the reverse?

As the complainants' lot is already built upon in the manner described, and as the complainants are bound by the covenants of their deed, to dedicate forever the two feet and a half at the rear of their lot, for the benefit of a private way for the owners of other lots in that square, can it be said with any semblance of probability, that at any future time they may have use for a party-wall on the line between such alleyway and the defendants' lot?

If not, then the idea of mutuality, which seems to be essential, is lacking; and if the defendants can be allowed to take six and a half inches off of the said alleyway, it must be for their own exclusive use in erecting the bakery, and such exclusive use of a wall deprives it of the character of a party-wall. *Harber v. Evans*, 101 Missouri, 665; *Washburn on Easements* (4th ed.), 605; *Field v. Leiter*, 118 Illinois, 17; *Whitman v. Shoemaker*, 2 Pearson (Pennsylvania), 320; *Moore v. Shoemaker*, 10 Appeals D. C., 14.

The fact of the two feet and a half strip being set apart for a right of way, was known, or ought to have been known, to the defendant, before he began the erection of his bakery. It was fenced off, and actually used as such private way, and the deeds on record showed it to be so dedicated.

The fact that the surveyor or the building inspector gave permission to him to use the said six and a half inches for the purpose of a party-wall, is not material, for if a party-wall can not properly be constructed on such ground under the building regulation, or under any statute, they have no authority to dispose of the property of the complainants, by giving a permit to the defendant to build on it.

On this hearing the court is only called upon to consider the propriety of continuing the restraining order or injunction pendente lite; and being of the opinion that the complainants may be entitled to a permanent injunction, restraining the defendant from taking the said six and a half inches for the purposes of a wall, which can be determined on final hearing, I am disposed to continue the restraining order or injunction, as asked by complainants, until the case can be heard and adjudged.

**Assault.**—Pointing an unloaded pistol at another, who does not know that the weapon is not loaded, and is put in fear by the act, is held, in *Price v. United States* (C. C. A.), 156 Fed., 950, 15 L. R. A. (N. S.), 1272, to be an assault, though not an assault with a dangerous weapon.



**Legal Notices.**

**Aliens.**—That a nonresident alien suing a nonresident alien to redress a wrong committed without the state will not be assigned to impound defendant's assets within the state by garnishment, to the prejudice of his resident creditor, who has obtained a judgment and a provisional lien against the assets, although the claim of the alien first accrued and his action was first brought—especially where the foreign creditor is acting merely as agent for a foreign trustee in bankruptcy, who would have no standing in court—is held, in *Disconto Gesellschaft v. Terlingen*, 127 Wis., 651, 106 N. W., 921, 15 L. R. A. (N. S.), 1045.

**Contracts.**—Baling of hay by a purchaser agreeing to pay a certain price per ton for hay and do the baling is held, in *Driggs v. Bush* (Mich.), 115 N. W., 985, 15 L. R. A. (N. S.), 654, to be sufficient part payment to take the contract out of the statute of frauds.

The destruction of a bridge by extraordinary flood is held, in *Mitchell v. Weston* (Miss.), 45 So., 571, 15 L. R. A. (N. S.), 833, to be within the obligation of a bond requiring the builder to replace it if removed from any cause, fire excepted, within a certain period.

**Banks.**—The fact that some of an insolvent bank's commercial paper, consisting of many separate instruments acquired at different times, may have been purchased with the general funds of the bank with which trust moneys have been mingled, is held, in *Crawford County Comrs. v. Strawn* (C. C. A.), 157 Fed., 49, 15 L. R. A. (N. S.), 1100, to be insufficient to fasten the trust upon it, or upon the proceeds of a part of it.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

**RULE OF COURT.**

**RULE 17, SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

**Legal Notices.****FIRST INSERTION.**

**Stockholders' Meeting (Annual).**  
OFFICE OF PUEBLO MINING COMPANY,  
Rooms 710-711 Colorado Building,  
WASHINGTON, D. C., December 3, 1908.

To the Stockholders of the Pueblo Mining Company:

Please take notice that the annual meeting of the stockholders of the Pueblo Mining Company will be held at the principal office of the company, in the city of Washington, D. C., on Tuesday, the 5th day of January, 1909, at 12 o'clock noon, for the purpose of electing nine trustees and for the transaction of such other business as may properly come before the meeting. The stock transfer books of the company will be closed on Saturday, the 26th day of December, 1908, at 3 o'clock P. M., and will remain closed until Wednesday, the 6th day of January, 1909, at 10 o'clock A. M.

49-2t

JNO. T. MCCOY,  
Secretary.

**Legal Notices.**

Irving Williamson, Solicitor

In the Supreme Court of the District of Columbia.  
John Joy Edson, Trustee, and Mary J. Watson v.  
The Unknown Heirs or devisees of Benjamin  
Stoddert et al. Equity No. 27,811. Doc. 61.

The object of this suit is to declare complainants' title perfect, by adverse possession to lot 41 in W. J. Williams et al., commissioners, subdivision of original lot 15 et al. in square 126, as per plat in book W. F., page 194, of the records of the surveyor's office of the District of Columbia, situate in the city of Washington in said District. On motion of the complainants, it is, this 2d day of December, 1908, ordered that the defendants, the unknown heirs or devisees of Benjamin Stoddert, the unknown heirs or devisees of John Green, and the unknown heirs of James S. Morrell and David Peter, trustees, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of three months from the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published twice a month for three months in The Washington Law Reporter and The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk.

dec 4, 11; jan 1, 8; feb 5, 12

E. H. Thomas and Jas. Francis Smith, Attorneys

In the Supreme Court of the District of Columbia,  
Holding a District Court.  
In re the Establishment of a Uniform Building Line  
on the South Side of Park Road from School Street  
to Sixteenth Street Northwest.

District Court No. 799.

Notice is hereby given that the Commissioners of the District of Columbia, pursuant to the provisions of an act of Congress approved June 21, 1906, entitled "An act providing for the establishment of a uniform building line on streets in the District of Columbia less than ninety feet wide," have filed a petition in this court praying the condemnation of the land necessary for the establishment of a uniform building line on the south side of Park Road from School street to Sixteenth street northwest, in the District of Columbia, as shown on a plat or map filed with the said petition, as part thereof, and praying also that a jury of five judicious, disinterested men, not related to any person interested in these proceedings, and not in the service or employment of the District of Columbia or of the United States, be summoned by the United States marshal for the District of Columbia to assess the damages each owner of land to be taken may sustain by reason of the establishment of said uniform building line on the south side of Park Road, for which this proceeding has been instituted, and the condemnation of the land necessary for the purposes thereof, and to assess as benefits resulting therefrom the entire amount of said damages, including the expenses of these proceedings, upon the land in the square in which said building line is to be established and in the squares confronting said square, as provided for in and by the aforesaid act of Congress. It is, by the court, this 27th day of November, A. D. 1908, ordered that all persons having any interest in these proceedings be, and they are hereby, warned and commanded to appear in this court on or before the 15th day of December, A. D. 1908, at 10 o'clock A. M., and continue in attendance until the court shall have made its final order ratifying and confirming the award of damages and the assessment of benefits of the jury to be empaneled and sworn herein; and it is further ordered that a copy of this notice and order be published once in The Washington Law Reporter, and on six secular days in The Washington Evening Star, The Washington Times, and The Washington Post, newspapers published in the said District, commencing at least ten days before the said 15th day of December, A. D. 1908. It is further ordered that a copy of this notice and order be served by the United States marshal or his deputies upon such of the owners of the fee of the land to be condemned herein as may be found by the said marshal or his deputies within the District of Columbia, and upon the tenants and occupants of the same, before the said 15th day of December, A. D. 1908. By the Court: THOS. H. ANDERSON, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

49-1t

Justice blanks of every description for sale at this office.

## Legal Notices.

Clarence R. Wilson, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Henry Woodruff, Deceased.

No. 15,684. Administration Docket.—

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate by Laura Woodruff Watson, it is ordered this 2d day of December, A. D. 1908, that Harry O. Woodruff and Walter Warren Woodruff, and all others concerned, appear in said court on Tuesday, the 5th day of January, A. D. 1909, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said

[Seal] return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-3t

Sheehy &amp; Sheehy, Attorneys

Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Annie P. Farley, Deceased.

No. 15,483. Administration Docket 88.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by James W. Bartley, it is ordered this 2d day of December, A. D. 1908, that Thomas T. Green and John P. Green, and all others concerned, appear in said court on Monday, the 11th day of January, A. D. 1909, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Herald once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day.

[Seal] WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 49-3t

Newcomb, Churchill & Frey and Emory H. Bogley,  
AttorneysSupreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters of administration on the estate of Orlando W. Hunt, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 2d day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 2d day of December, 1908. MORRIS F. FREY, Nat. Met. Bank Bldg.; EMORY H. BOGLEY, 486 La. ave. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,643. Administration. [Seal.] 49-3t

Gordon &amp; Gordon, Solicitors

In the Supreme Court of the District of Columbia.  
Minnie C. Dodd, Complainant, v. James M. Craighill et al., Defendants.  
Equity No. 28,114.

The object of this suit is to establish the complainant's title by adverse possession to part of lot 20, in square 141, in the city of Washington, in the District of Columbia, described as follows: Beginning at the northeast corner of said lot and running south 25 feet, west 50 feet, south 6 feet, west 50 feet, north 31 feet, and east 100 feet to the beginning. It is, on motion of the complainant, this 2d day of December, 1908, ordered by the court that the defendants, James M. Craighill, Elizabeth R. Davidson, William E. Craighill, Mary M. Lippett, Sarah E. Perry, Nathaniel R. Craighill, and Allen P. Bowie, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington

[Seal] Law Reporter and The Evening Star. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 49-3t

## Legal Notices.

Wilson &amp; Barksdale, Solicitors

In the Supreme Court of the District of Columbia.  
Edward F. Morgan et al. v. John R. Morgan et al.  
Equity No. 27,880.

Upon consideration of the trustees' report of the sale of the following-described land and premises, situate in the District of Columbia, beginning for the same on the north line of a roadway where John R. Morgan's north-east line intersects said roadway at a point distant 285 feet, more or less, north 55° 9' 45" east from the east line of Connecticut avenue where Grant road crosses said avenue, and leaving said roadway and running north 51° 47' 15" west 182 feet to a peg; thence north 10° 44' east 572.25 feet to a flint stone; thence north 85° 2' 45" east 488.45 feet to a peg; thence south 20° 44' 15" east 152.86 feet to a stone; thence south 0° 44' 15" east 414.15 feet to a peg; thence south 55° 9' 45" west 566.41 feet to the place of beginning, about seven and one-half acres, subject to two rights of way ten feet wide along a part of the eastern and western boundary line, to Harold E. Doyle for \$20,750 cash; and the sale of the piece of property beginning at a point on the division line between the land of the Chevy Chase Land Company and the land formerly belonging to the estate of John R. Morgan, deceased, said point being north 10° 34' east 542.4 feet from a stone at the southwest corner of the land now owned by John R. Morgan; thence with said line north 10° 34' east 20 feet; thence east 101.72 feet; thence south 16° 34' west 200 feet; thence west 101.72 feet to the place of beginning, containing 20,000 square feet, more or less, together with the improvements, to Harold E. Doyle for \$5,700 cash, and the recommendation of the trustees that said sales be ratified, it is, this 3d day of December, 1908, ordered that said sales be, and the same are hereby ratified and confirmed, unless cause to the contrary be shown on or before January 8, 1909. Provided a copy of this order be published once a week for three successive weeks before said last-named day in

[Seal] The Washington Law Reporter and The Washington Herald. WRIGHT, Justice. True copy. Test: J. R. Young, Clerk, by E. J. McKee, Asst. Clerk. 49-3t

G. C. Gertman, Solicitor

In the Supreme Court of the District of Columbia.  
Daniel W. Kelley, Complainant, v. Sarah Catharine Kelley et al., Defendants. Equity No. 28,124.

The object of this suit is to obtain a decree confirming a contract of sale and for partition by sale of the north sixteen feet front on Sixth street east by depth of fifty-six feet of lot numbered thirteen (13) in square numbered eight hundred and seventy (870), in the city of Washington, District of Columbia. On motion of the complainant it is, this 2d day of December, 1908, ordered that the defendants, Frank T. Kelley and George H. Kelley, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the case will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington Law Re-

[Seal] porter and The Evening Star before said day. JOB BARNARD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 49-4t

Wm. D. Hoover, Attorney

Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, who were by the Supreme Court of the District of Columbia granted letters testamentary on the estate of Cecilia Howard, deceased, have, with the approval of the Supreme Court of the District of Columbia, holding a Probate Court, appointed Monday, the 21st day of December, 1908, at 10 o'clock A. M., as the time, and said court room as the place, for making payment and distribution from said estate, under the court's direction and control, when and where all creditors and persons entitled to distributive shares or legacies or a residue, are notified to attend, in person or by agent or attorney duly authorized, with their claims against the estate properly vouched. Given under our hands this 2d day of December, 1908. GEORGE HOWARD: NATIONAL SAVINGS AND TRUST COMPANY, by Wm. D. Hoover, Attorney. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 14,987. Administration. [Seal.] 49-3t

**Legal Notices.****E. Hilton Jackson, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Matilda Rutherford**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **1st day of December, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 1st day of December, 1908. **MATILDA COWSILL**, 634 I st. N. E.; **ANNIE FARDON**, 313 Mass. ave. N. E. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,612. Administration. [Seal.] 49-St

**John E. McNally, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Charles Schlegel**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of November, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of November, 1908. **GEORGIANNA SCHLEGEL**, 1835 6th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,638. Administration. [Seal.] 49-St

**Clark, Prentiss & Clark, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Travus Ross**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of November, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of November, 1908. **LAURA ROSS**, 1613 12th st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,616. Administration. [Seal.] 49-St

**Charles J. Murphy, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of **John J. Miller**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the **30th day of November, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 30th day of November, 1908. **JOHN M. CARSON**, 1232 Vermont ave. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,633. Administration. [Seal.] 49-St

**Carlisle & Luckett, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of **Juliana Walker Gales**, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the **25th day of November, A. D. 1909**; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 27th day of November, 1908. **JOHN MCCLELLAN**, 2114 O st. N. W.; **OSCAR LUCKETT**, 344 D st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,364. Administration. [Seal.] 49-St

**Legal Notices.****Birney & Woodard, Attorneys for Plaintiff**

**In the Supreme Court of the District of Columbia.**  
**The Walker-Hughes Market Company, a Corporation**  
**Organized and Doing Business Under the Laws of**  
**the State of Virginia in Its Own Right and as As-**  
**signee, Plaintiff, v. Max G. Seckendorf, Defend-**  
**ant.** At Law, No. 51,011.

The object of this suit is to recover a judgment for goods sold and delivered by the plaintiff to the defendant, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 30th day of November, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Herald newspaper and The Washington Law Reporter before the said date. By the Court: **WENDELL P. STAFFORD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **Alf. G. Buhrman**, Asst. Clerk. 49-St

**Birney & Woodard, Attorneys for Plaintiff****In the Supreme Court of the District of Columbia.**

**Alexander L. Satterwhite, Plaintiff, v. Samuel**  
**Stewart, Defendant.** At Law, No. 50,960.

The object of this suit is to recover a judgment against the defendant on contracts ex-contractu, and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim. It is, therefore, this 30th day of November, 1908, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the date of the first publication of this order, to defend this suit and show cause why said condemnation should not be had; otherwise the suit will be proceeded with as in case of default. Provided a copy of this order be published once a week for three successive weeks in The Washington Herald newspaper and The Washington Law Reporter before the said date. By the Court: **HARRY M. CLABAUGH**, Chief Justice. A true copy. Test: **J. R. Young**, Clerk, by **Alf. G. Buhrman**, Asst. Clerk. 49-St

**Bates Warren, Solicitor****In the Supreme Court of the District of Columbia.**

**Francis D. Parker et al. v. Sarah C. Mitchell et al.**  
**Equity, No. 19,967.**

The trustees herein having reported an offer of **Charles A. McEuen** in behalf of **Charles B. Brookes** for the purchase of part of lot 15 in subdivision of "Bayley's Purchase," containing 7.98 acres for the sum of \$100 per acre, it is, this 1st day of December, 1908, ordered by the court that said offer be accepted and said sale be made and finally ratified, unless cause to the contrary be shown on or before the 4th day of January 1909. Provided this order be published once a week for three successive weeks before said last mentioned date in The Washington Law Reporter. **JOB BARNARD**, Justice. A true copy. Test: **J. R. Young**, Clerk, by **J. A. C. Palmer**, Asst. Clerk. 49-St

**Milton Strasburger, Attorney****In the Supreme Court of the District of Columbia,  
Holding Probate Court.**

**In re Estate of John A. Brown, Deceased.**  
**Adm. No. 15,476.**

Application having been made for the probate of the last will and testament of said deceased, and for letters testamentary on said estate, by **Mary S. Reeves** and **Benjamin H. Schwartz**, it is ordered, this 1st day of December, 1908, that **Norman Brown**, the unknown next of kin of **John A. Brown**, deceased, and all other persons concerned, appear in said court on Friday, January 8, 1909, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Washington Post once in each week of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. **JOB BARNARD**, Justice. A true copy. Attest: **James Tanner**, Register of Wills. 49-St

# The Washington Law Reporter

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WASHINGTON, D. C. - - - - DECEMBER 25, 1908

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### CASES DECIDED BY THE COURT OF APPEALS.

#### Negligence Causing Death; Proximate Cause.

In *Cleveland v. Harries* and others the appeal was from a judgment for defendant in an action to recover damages for the death of plaintiff's intestate. The action was against the brigadier-general commanding the National Guard of this District and the navigating officer and ensign of the Naval Battalion. The deceased was a member of the Naval Battalion, and the accident causing his death occurred while he was on duty as a member of the crew on a vessel on the Potomac River. The appellee was charged with negligence in that, as commanding general, he had, in disregard of the provisions of the act of Congress relating to the organization of the District militia, recommended his codefendants for appointment to their respective positions in the Naval Battalion and placing them in charge of the vessel, although he knew of their incompetency. The trial court sustained a demurrer filed by the appellee to the declaration on the ground that his negligence, if any, was not the proximate cause of the accident; and the judgment is affirmed by the Court of Appeals, in an opinion by Mr. Justice Van Orsdel.

#### Patent Office; Inspection of Records.

In *Moore, Commissioner of Patents, v. U. S. ex rel. Boyer*, the Court of Appeals, in an opinion by Mr. Justice Van Orsdel, reverses a judgment of the court below granting a writ of mandamus to compel the Commissioner of Patents to permit relator to inspect and obtain copies of letters patent issued to a third party. It is held that the case is not one in which a writ of mandamus would lie.

#### Condemnation of Land for Alleys; Traverse of Jurisdictional Facts.

In *Fay v. Macfarland*, a petition was filed by the District Commissioners for the condemnation of land for an alley, alleging that petitioners deemed the public interests required the opening and extension of the alley, and that the owners of more than one-half of the real estate in the square had petitioned therefor. Appellants moved to dismiss the proceeding, denying that one-half the owners of real estate in said square had asked for the opening or extension of the alley, and also denying that the public interests required it or that the Commissioners deemed the public interests so required. The trial court overruled the motion, and a jury was summoned, which made an assessment against lands of appellants. No evidence was offered in support of the allegations denied by appellants, who thereafter again moved to vacate the proceedings. The motion was overruled and the verdict confirmed. The judgment is reversed by the Court of Appeals, in an opinion by Mr. Justice Van Orsdel, which holds that the issues of fact raised by the motion of appellants required affirmative proof in order to give the court jurisdiction to proceed, and that it was error to overrule the motion without taking evidence on the issues thus joined.

#### Ejectment; Outstanding Title in Third Person.

In *Bursey v. Lyon*, the appeal was from a judgment for plaintiff entered upon a verdict directed by the court in an action of ejectment. The Court of Appeals, in an opinion by Mr. Justice Van Orsdel, which reviews the chain of title upon which the plaintiff relies and holds that one link in said chain was defective in that it showed the legal title outstanding in a third person, reverses the judgment. It appeared that one Brandt, as the holder of the legal title, had conveyed the property to one Walker in trust to secure a certain indebtedness, and that thereafter the trustee Walker had undertaken to release the trust deed to a corporation through whom the plaintiff claimed, the deed of release reciting that the land had been discharged from the operation of the trust deed, and no conveyance from Brandt, other than the trust to Walker, appearing in the record.

# Supreme Court of the District of Columbia

## THE BUCK'S STOVE AND RANGE COMPANY

v.

## THE AMERICAN FEDERATION OF LABOR ET. AL.

Decided December 23, 1908.

HEARING on a rule against certain defendants to show cause why they should not be punished for contempt in the violation of an injunction. Defendants sentenced to imprisonment.

Mr. DANIEL DAVENPORT, Mr. J. J. DARLINGTON, and Mr. W. C. SULLIVAN for complainants.

Mr. J. H. RALSTON, Mr. F. L. SIDDON, and Mr. ALTON B. PARKER for defendants.

Mr. Justice WRIGHT delivered the opinion of the Court:

The defendants, Samuel Gompers, Frank Morrison, and John Mitchell are charged with wilfully violating the terms of the preliminary injunction herein heretofore issued after a hearing before Mr. Justice Gould.

The matter of the charges is not to be understood or intelligently determined without a comprehension of the status of persons and conditions at the time the injunction issued, and these in turn can only be come at by a good understanding of the nature and cause of the original controversy between the parties and the situation which had developed from the confessed boycott, established against the plaintiff and its customers by the defendants and others.

### CONDITIONS ANTECEDING THE INJUNCTION.

Since 1846 the plaintiff, with headquarters in St. Louis, Mo., has been engaged in the manufacture of stoves and ranges, having at the institution of this suit an invested capital of about \$950,000, customers in all the territories and in nearly all the States of the Union, gross sales amounting to about \$1,250,000 annually, nine-tenths of its product being disposed of in the course of interstate commerce to customers in the territories and in States other than Missouri.

For twenty-five years it had operated as a ten-hour shop; that is to say, the men and machinery in all departments worked ten hours per day. At the time of filing the bill it comprehended seven departments employing 745 men, as follows:

Moulding department, 300; cleaning department, 25; mounting department, 75; steel range mounting department, 50; nickel or polishing department, 75; enameling department, 45; shipping department and miscellaneous, 175.

Plaintiff had a always maintained "an open shop;" that is, a shop where both union and non-union men were employed without discrimination for or against either class. No employee had ever been discharged because of membership in any union, nor had employment of men ever been refused or influenced by that consideration. Of the 745 men, between 400 and 500 were members of various labor unions, and of the 75 engaged in the polishing department, 36, constituting a majority of the polishers, were members of the Metal Polishers, Buffers, Platers' Union, No. 13, of St. Louis. This Union No. 13 was one of upwards of 130 local unions which together composed the Metal Polishers, Buffers, Platers, Brass Molders,

and Brass and Silver Workers' International Union of North America.

Plaintiff was a member of an association of stove manufacturers, called The Stove Founders' National Defense Association. There existed an agreement of long standing between the Stove Founders' National Defense Association and the Metal Polishers, Buffers, Platers, Brass Molders, and Brass and Silver Workers' International Union of North America providing for the settlement of all disputes between a member of the Stove Founders' National Defense Association and a member of the union by a conference committee, and that the decision should be binding upon each party for a term of twelve months, and providing further "that pending the adjudication by the presidents and conference committee, neither party to the dispute shall discontinue operations, but shall proceed with business in the ordinary manner." Many grievances have been adjusted under this agreement, its provisions having been faithfully observed and kept by the Stove Founders' National Defense Association, and by the plaintiff as a member.

The thirty-six metal polishers in the employ of the plaintiff were "piece workers;" that is, they were paid by the piece, and earned from \$4.00 to \$5.25 per day, according to their individual skill and the number of hours worked.

In November, 1905, it first came to the attention of J. W. Van Cleave, president of the plaintiff, that metal polishers were leaving their work before quitting time, some of them as early as an hour and a half before, at whatever time they happened to finish a job. Shortly afterward the works were closed down for annual repairs and inventory, and upon the day of closing the president, Van Cleave, called together all polishers in the polishing department and addressed them thus: "I called their attention to what had come to my notice, and told them that we would not permit that; that our shop was then and always had been running ten hours; that all of our machinery ran ten hours; and that I called them there for the purpose of informing them that when we started up in the beginning of 1906, that every department would have to work, and every man in every department would have to work ten hours."

"I also called their attention to the fact that it had been reported to me that the Polishers' Union had put on a wage limit; that is to say, the amount per day that each man should earn and then quit work. I told them that if that was true, and that the men were submitting to that, that that was robbing their own wives and children, and that we would not submit to it; that God had never made any two men with the same ability, and, therefore, each man must earn all he could in the shop, doing all the work he could, and, it being piece work, he would thereby earn more or less, according to his ability."

"I told these men also, that if they were not satisfied with our rules and our shop conditions, that I would give them six days' notice three weeks before we opened shop in 1906, in order that they might get other places if they wanted to; but, if they returned to work they would have to return under the rules of our shop, and not under any rules that they might make."

Upon the reopening of the works in January, 1906, notices were posted in its polishing department by the plaintiff that all its employees were re-

quired to work ten hours a day during the year 1906. All of these men returned to work, accepted their old places and worked continuously ten hours a day until August 27th, earning large wages. At 5 o'clock on the 27th, one of them by name Ford, gave a prearranged signal to quit work; the men immediately left their wheels, put up their work and left the department. This action was not only in violation of the shop rules, but a breach of the agreement between the union and the Defense Association, and was taken without notice to or conference with the plaintiff or Van Cleave, its president. Upon the morning of the 28th, the men all returned to work and all were permitted to resume work save Ford and Jansen who were discharged for having incited the men to break the shop rules the day before. At 5 o'clock upon the second day the signal to quit work was again made by one Brindle, and the procedure of the preceding day repeated. Upon the morning of the 29th the men returned to work; all save Brindle were permitted to resume, he being discharged as Ford and Jansen had been, for inciting the men to break the shop rules. Upon the discharge of Brindle, the foreman of the plating and polishing department was straightway informed by a workman, Poe, that if Brindle, Jansen and Ford were not reinstated before 8 o'clock the men would leave the shop at that hour. They were not reinstated and at 8 o'clock the thirty-six union polishers struck and left the shop in a body. The strikers threw a cordon of pickets around the plant of the plaintiff, did what they could to prevent the plaintiff from carrying on its business, and what they could through violence, intimidation and otherwise to prevent the places which they abandoned in the factory from being filled by other polishers, but their efforts in this respect were unsuccessful. Thereafter the Local Union No. 13 declared a boycott against the plaintiff's product and asked its endorsement and declaration of boycott from the Central Trades and Labor Union of St. Louis, the Metal Polishers, Buffers, Platers, Brass Molders and Brass and Silver Workers' International Union of North America and the Metal Trades Council of St. Louis. Meanwhile union men continued in the employ of the plaintiff drawing pay for making the very product which labor unions were boycotting outside the doors. On October 24th, David Kreyling, Secretary of the Central Trades and Labor Union, St. Louis, Edward Lucas, member of the Metal Polishers' Union, St. Louis, and Mr. Bechtold, Secretary of the Metal Trades' Council, St. Louis, called together at the office of the plaintiff, were received by its president, Van Cleave, and a conference was there had.

A stenographic report of this conference, spreading over nine typewritten pages, is appended to this opinion (App. B); its significance is to show that before these three labor unions endorsed the boycott that they knew that the metal polishers had never secured the nine-hour day, and were informed of the falsity of its position; that they understood that the thirty-six metal polishers had violated the shop rules and broken the agreement with the Defense Association; and its further significance is to tie the International Iron Molders' Union of North America to the distortion appearing in its statement of grievances laid before the Executive Council of the American Federation of Labor as a basis for its endorsement of the boy-

cott, and signed by this same Bechtold himself as its secretary and treasurer, as follows:

"About August 1st, 1906, the Buck's Stove and Range Company attempted to force the metal polishers to resume the ten-hour work day, after enjoying the nine-hour work day for a period of eighteen months, and are still making every effort within their power to adjust their grievance. Mr. J. W. Van Cleave, president of the Citizens' Industrial Alliance, also, president of the Manufacturers' Association, enjoys a reputation equal to that of Parry and Post. He is president of the Buck's Stove and Range Company, and *absolutely refused to deal with a committee composed of David Kreyling, business agent of the Central Trades and Labor Union of St. Louis, Edward Lucas, a member of the metal polishers', and myself*, stating that he was a member of the Founders' National Defense Association, and that his association acted for him in such matters."

The boycott was endorsed by each of these three unions shortly after this conference.

No question is made about the truth of any of the foregoing. No evidence was offered by the defendants in gainsay or in contradiction. Manifestly, no boycott based on such a foundation could ever hope for even the toleration, much less the support, of the friends of organized labor or even the mass of labor men themselves, as seems to have been foreseen by the promoters of this particular enterprise; for the thousands of circulars distributed amongst the public and the customers of the plaintiff generally, stated a case of deceit and falsity, a case that had no existence and never had had, thus:

"To whom it may concern, greeting:

"The Metal Polishers and Buffers' Union 13 have been on strike at the Buck's Stove and Range Company, 3500 North Second street, St. Louis, Missouri, since August 27th, 1906. The polishers in the employ of the Buck's Stove and Range Company had been working the 9-hour day for 18 months; this firm not being content with having peace and harmony exist, insisted on having the men return to the ten-hour day. This the Metal Polishers' Union objected to, knowing that if the Buck's Stove and Range Company were allowed to place their polishers back on the 10-hour day it would be only a matter of a short time before the other firms where our members are working the nine-hour day would adopt the same method. This firm has been placed upon the 'unfair' list of our international union. The Central Trades and Labor Union, and the Metal Trades' Council, of St. Louis and vicinity, have also placed said firm upon the 'unfair' list, or 'We Don't Patronize' list. This circular is being sent to inform the dealers who handle the product of the Buck's Stove and Range Company of the unfairness of this concern. We trust that if your concern is handling any of the products of said firm you will cease doing the same, thereby assisting the Metal Polishers' Union against this unfair firm.

"Thanking you for any assistance rendered our organization in this matter, and assuring you that if at any time the favor can be returned, we will gladly do so.

Respectfully,

METAL POLISHERS' AND

BUFFERS' UNION NO. 13,

1310 Franklin Avenue, St. Louis, Mo."

Although fully informed at the conference with



Van Cleave and otherwise that the plaintiff had never operated any department on a nine-hour scale, knowing not only that the polishers had never secured a nine-hour day, but knowing that they had failed in a contention for it before the tribunals constituted by the joint agreement between the Defense Association and the union, knowing that the members of Union 13 had violated that agreement by striking, this same international union, together with the aforesaid Metal Trades Council, and Central Trades and Labor Union, approved the following invention and spread it broadcast in circular form, together with other official notices of the boycott.

**METAL POLISHERS, BUFFERS, PLATERS, BRASS MOLDERS, AND BRASS AND SILVER WORKERS' UNION OF NORTH AMERICA.**

Affiliated with American Federation of Labor.

An Injury to One is the Concern of All.

"To Organized Labor and Friends, Greeting:

"On August 29th, 1906, the Metal Polishers, Buffers and Platers of Local No. 13 of St. Louis, employed at the Buck's Stove and Range Company, were compelled to strike on account of the management of said firm insisting on the polishers, buffers and platers in their employ returning from the nine-hour to the ten-hour workday. In the month of June, 1904, the members of the above-named union employed at the Buck's Stove and Range Company secured the nine-hour workday. After working the nine-hour day for eighteen months, or until January 1st, 1906, notice was posted in the polishing department informing the men that on and after January 1st, said department would run ten hours a day.

"When the men returned to work after said date, they immediately notified the firm that they would work the ten-hour day under protest, or until such time as our International Union and the Stove Founders' National Defense Association, with whom we have a national agreement, could agree upon a settlement, and after several conferences, between our international union and said association had been held, and being unable to arrive at a settlement, the above action was taken.

"J. W. Van Cleave, president of said concern, is also president of the Citizens' Industrial Association of this city. 'His sole ambition is to crush the labor unions in general.' Metal Polishers' Union Number 13 has placed said firm upon the 'unfair' list, and their action has been endorsed by the International Union of Metal Polishers, Buffers, and Platers, The Central Trades and Labor Union, and Metal Trades' Council of St. Louis and vicinity. We sincerely trust that your organization will render all moral assistance in your power in giving this 'unfair' firm as much publicity as possible, and also appoint committees to visit dealers handling stoves and ranges of said firm, and request them to cease handling said goods, and also have them write the firm a letter to that effect.

"Do not file this circular, but appoint your committees immediately, as a victory in this fight means a great deal to organized labor in general, and a blow to the Citizen's Industrial Association.

"Thanking your organization in advance for this favor, we remain,

Fraternally and sincerely yours,

(Signed) "METAL POLISHERS, BUFFERS AND PLATERS' UNION No. 13."

"(Seal of Metal Trades' Federation of North America. Metal Trades' Council No. 1 of St. Louis and vicinity.)

"(Seal of Central Trades and Labor Union of St. Louis and vicinity.)

"P. S.—Any further information desired will be cheerfully furnished by addressing Metal Polishers, Buffers and Platers' Union, No. 1310 Franklin Avenue, St. Louis, Mo."

**FURTHER ENDORSEMENT OF THE BOYCOTT.**

The American Federation of Labor of which Samuel Gompers is president, Frank Morrison secretary, and John Mitchell a vice-president, is a federation of various labor unions numbering in the neighborhood of thirty thousand unions with a membership of about two million persons. Something of its purposes is to be gathered in the preamble to its constitution, as follows:

"Whereas, A struggle is going on in all the nations of the civilized world between the oppressors and the oppressed of all countries, a struggle between the capitalist and the laborer, which grows in intensity from year to year, and will work disastrous results to the toiling millions if they are not combined for mutual protection and benefit.

"It, therefore, behooves the representatives of the trade and labor unions of America, in convention assembled to adopt such measures and disseminate such principles among the mechanics and laborers of our country as will permanently unite them to secure the recognition of the rights to which they are justly entitled.

"We, therefore, declare ourselves in favor of the formation of a thorough federation, embracing every trade and labor organization in America organized under the trade union system."

The official organ of the American Federation of Labor is a monthly publication edited by Gompers, entitled, "American Federationist." As stated by him in the publication itself, "It is the only authorized publication of the American Federation of Labor. It is read by thousands of people in every part of the continent outside of the labor organizations as well as by members of the American Federation of Labor." He states in his annual report as president in 1905: "There are published now 185 official journals issued monthly or oftener by American international unions, and 179 weekly labor papers, all devoted to the defense and advocacy of labor's interests nearly all of which are stoutly espousing the trade union movement and the American Federation of Labor."

These publications, being "official" organs are therefore the mediums upon which organized labor and its friends are required to rely in gathering their information about labor controversies and the causes of strikes and boycotts. The official organ of the Metal Polishers, Buffers, Platers, Brass Molders and Brass and Silver Workers' International Union was a publication called "The Journal." The following is one of its publications:

"Charles R. Atherton, Editor Journal: I wish to make a special plea to all union men in behalf of Local 13, in their fight against the Buck's Stove and Range Company of St. Louis, which is an active fight against organized labor in general, in all lines of work. The local trouble is merely to be an entering wedge, which if successful, will end in a general movement to go back to ten hours as

the recognized day of work; and furthermore, Mr. Van Cleave, the president of the Buck's Stove Company is also the national president of the Manufacturers' Association and president of the local Citizens' Industrial Alliance of St. Louis. He has been very active in all labor troubles, whether in his line or not, being generally the leader and aggressor, showing what he will do and how he will do it. His present move is to break up the unions of St. Louis. He is of the same breed as Parry of Indianapolis; Post of Battle Creek, Mich.; whose line is salvage grain, with a coffee flavor, and sweat shop labor, and the Divine Right Baer Coal Trust fame.

'Now, brothers, it is up to you to help yourselves by driving the Buck's Stove and Range Company from the markets. As the line is something we all use, either for cooking or heating purposes, and if we can not make ourselves felt in this fight we certainly can not in any other line. In Toledo Local 2 has put up a great argument with the one dealer who handles the Buck's stove by visiting all the unions in the city, and by distributing boycott cards, etc., until every workingman in the city knows the firm is 'unfair.' The local dealer, after spending a large sum in advertising the stoves, and carting stoves back to the store that had been sent out on trial, was forced to admit that his stove business is dead in Toledo, and has stopped advertisement, and if he ever gets rid of his present stock of Buck's stoves, he says he will never do it again. Do not let up now, for when the season for heating stoves is past they will then try again to push the ranges and cook stoves, and if discouraging letters reach the makers from every part of the country from their agents and dealers, Mr. Van Cleave will probably then realize that trying to bust unions is not in his line, and will take less interest in such business, as I believe him to be a modern business man, and more ready to sacrifice his principle than his business. Fraternally, yours,

MAXZ,  
Local 2."

Copies of the foregoing and similar circulars and of the journal were distributed broadcast; amongst those merchants who handled plaintiff's goods, the members of labor unions, and the public generally, pending an application to the American Federation of Labor for its endorsement of the boycott. The Federation meets once annually in convention of the representatives of trade unions affiliated throughout the land. According to its constitution, "No endorsement of a boycott shall be considered by the convention, except it has been so reported by the Executive Council." This Executive Council is composed of the president, the vice-presidents, the secretary, and the treasurer. The constitution of 1886 provided " . . . it shall be the duty of the Executive Council to secure the unification of all labor organizations so far as to assist each other in any justifiable boycott." In 1886 this provision was amended so as to read: " . . . It shall be the duty of the Executive Council to secure the unification of all labor organizations so far as to assist each other in any trade dispute."

The laws of the Federation itself prohibited the endorsement of more than three boycotts at the same time for one international union; at the time of the convention of 1906 the Federation had endorsed boycotts against and was carrying on its "We-Don't-Patronize" list the names of three firms

who had been boycotted by the Metal Polishers, Buffers, Platers, Brass Molders and Brass and Silver Workers' International Union, and was rendering effective these boycotts; so that its own laws prohibited it from endorsing the boycott against the plaintiff. The Metal Polishers' International Union had instructed its delegates to the annual convention to secure an endorsement nevertheless, and to that convention its president, one Grout was a delegate; and Bechtold, the same who had taken part in the conference with Van Cleave, delegate from the International Brotherhood of Foundry Employees, upon the floor of the convention introduced the following resolution:

"Whereas, the Buck's Stove and Range Company of St. Louis which is owned and controlled by J. W. Van Cleave, president of the Manufacturers' Association has persistently discriminated against members of the Foundry Employees' Union, to the extent of discharging every man as soon as it became known that he was a member of said union; therefore, be it resolved, that the product of the above named factory be placed on the 'We-Don't-Patronize' list of the American Federation of Labor."

The treachery and deceit of this resolution is displayed by the testimony of the president, the general manager, superintendent, assistant superintendent, and foreman of the plaintiff, who upon their respective oaths each declare that never, up to the very day of the resolution, had the plaintiff or any one acting in its behalf discharged or in any way discriminated against any man, in any department, on account of membership in any union; each upon his oath further declares that up to the very day of the resolution he had never heard or knew of the existence of a Foundry Employees' Union, that his first information as to its existence was that conveyed by the subsequent report of the proceedings of this very convention. The answer to this testimony is silence; no claim is made, nor witness brought, nor word spoken in denial. Upon the introduction of the resolution it was at once referred by the president, Gompers, to the committee on boycotts, upon which he had already appointed amongst others, the aforesaid Grout, president of the International Polishers' Union. This committee thereupon reported back the resolution with recommendation that it be referred to the Executive Council; this recommendation was adopted by the convention and the resolution was so referred with a direction to the Executive Council to take action thereon at the earliest possible moment. The Executive Council at its next meeting, held in March, 1907, at Washington, D. C., placed the name of the plaintiff and its product on the "We-Don't-Patronize" list of the American Federation of Labor, and directed the publication thereof in that list in the American Federationist, in its succeeding issues. Immediately thereafter there was a broadcast distribution of many thousands of the following notices:

#### "IMPORTANT NOTICE.

"The Executive Council of the American Federation of Labor, in session at Washington, D. C., March 18-23; 1907, placed the

'Buck's Stove and Range Company,  
of St. Louis, on the  
Unfair List.

'The publication of this concern will be made

in the "We-Don't-Patronize" list commencing in the May issue of the American Federationist.

"This firm is commencing to advertise in daily papers all over the country, endeavoring to offset the above action. All members take notice. Appoint committees to visit the dealers and bring it to the attention of all friends of organized labor."

The May number of the Federationist carried the following:

**"SPECIAL NOTICE.**

WASHINGTON, D. C., June 25, 1907.

**'To All Affiliated Unions:**

'At the request of the unions interested and after due investigation and attempt at settlement, the following concerns have been declared UNFAIR:

BUCK'S STOVE AND RANGE COMPANY, ST. LOUIS, MO.

'Secretaries are requested to read this notice at union meetings, and Labor Reform Press please copy.

Fraternally yours,

SAMUEL GOMPERS,  
President, American Federation of Labor."

And subsequently carried the name of the plaintiff on its "We-Don't-Patronize" list. Boycotts of between 400 and 500 firms had already been conducted, the experiences of which had developed an expert skillfulness in modo operandi in which the expressions "We-Don't-Patronize" and "Unfair" were understood to be used as synonyms for the coarser sounding verb "boycott" in its imperative mood. The fact of the endorsement of the boycott by the American Federation of Labor was heralded broadcast throughout the United States through the mediums of trade and other journals, circulars, banners, by word of mouth, and the boycott proceeded. Members of labor unions were forced and coerced into supporting it whether individually willing or unwilling, approving or disapproving, by methods amongst which were the following:

[Extract from the Report of the Proceedings of the Annual Convention of the American Federation of Labor, held in November, 1907.]

From the Report of the Committee on Boycotts.

"We desire to call your attention to the action of the Minneapolis, Minn., convention on this important matter, and particularly to the recommendations thereon as concurred in by that convention. Conditions have not been materially changed since that time, and we therefore recommend that the Executive Council be instructed to remove from the 'We-Don't-Patronize List' the names of firms in all instances wherein the Executive Council has knowledge that the national or international union responsible for the boycott are not aggressively pushing the same. We feel that the boycott should only be resorted to after all efforts at adjustment have failed, but when instituted by national, international, state, or central bodies, it should be made so effective that speedy agreement between the international union firms will follow."

The following is from the report of the proceedings of the convention of the American Federation of Labor held in 1895.

"The committee on credentials, having considered the protest of the garment workers against seating the delegate from the progressive musical union has arrived at the following conclusions:

'In view of the fact that this organization has

flagrantly and persistently violated the principles and constitution of the A. F. of L., in refusing to indorse the boycott levied by the garment workers and endorsed by the A. F. of L., and has done all in their power to offset said boycott, we recommend that the delegate be not seated.

"The secretary stated that such action practically expelled the organization refusing to endorse a boycott. While to censure might be in order he thought expulsion somewhat harsh."

The report was adopted.

B. Hencken, engaged in the house-furnishing business in East St. Louis testified amongst other things:

"I had sold a railroad man . . . a bill of furniture on time payments . . . and he rented his house from this man Smith, . . . and we sent our carpet man to get the measure for this man's carpet . . . and Smith refused to let him in, he wouldn't let him in; . . . Smith told this railroad man to go and see the grievance man I believe they called him—if he wouldn't permit for him to buy the goods from us . . . so this railroad man that I sold the goods to, he went to see this man, and this man said he couldn't buy the goods from us, that if he did that he would be thrown out of the union."

Smith was the representative of the local union body in East St. Louis.

As late as January, 1908, the United Mine Workers of America, an organization of several hundred thousand members, in convention assembled, adopted this:

"Resolved, That the United Mine Workers of America, in nineteenth annual convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the United Mine Workers of America purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

So much, although but a meager sketch, shows the methods of influencing members of unions, and these methods seem to be known as "persuasion."

Passing from them the customers of the plaintiff were intimidated, browbeaten, and coerced out of their business relations with the plaintiff by direct interference with and boycott of their (the customers) trade relations with their own customers and the public generally, of which the following is typical and illustrative.

Joseph Kipper was a stove merchant in the city of St. Louis, handling the plaintiff's stoves. The following is from his testimony:

"One man, he followed me in the evening, it was somewhere around six o'clock, toward dark any how, and he said that he seen that I had a Buck's stove in my show case, and if I wasn't going to remove that stove, he would knock the show case in and throw the damned stove out into the street."

P. J. Farrington, secretary of the St. Louis House Furnishing Company, testifies that Kreyling, secretary and visiting agent of the Central Trades and Labor Union, Leberman, international vice-president, Metal Polishers' Union, and Platers, Brass and Silver Workers' International Union of North America, and Moran, visitors' agent of the Stove and Range Founders' Union, St. Louis, called at the establishment and demanded that the firm quit selling the plaintiff's goods.

"We got talking about different subjects, and

Mr. Kreyling says: 'We are getting away from the subject. What we came here for is to see whether you are going to stop handling and selling Buck's stoves and ranges.' I said: 'You should not place a merchant in that position. If you people have a fight or grievance with Mr. Van Cleave or the Buck's Stove and Range Company you should not try to beat them over our shoulders. It took my partner and myself fifteen years to build up this business, and I don't think you people should try to destroy it because you have a grievance or fight with Mr. Van Cleave.' Mr. Kreyling said that the only way that they could reach him was to get the people to stop buying their goods, and that if we didn't stop they would put us on the Unfair List, and they left" (referring to a circular). "This is the boycott notice that was pasted on the upright pieces in front of our store that is used by the Electric Street Car Company, and there are several others that were posted up and down the avenue." . . . It was done at night; it would be on in the morning and we would have our porter take it off. It was put on there four or five days in succession."

This is the notice:

**"BOYCOTT**

**"ST. LOUIS HOUSE FURNISHING CO.,**

**"904 Franklin Ave.,**

**"AGENT FOR BUCK'S STOVES AND RANGES,**  
which are

**"UNFAIR TO ORGANIZED LABOR.**

Endorsed by—

Metal Polishers' Union No. 13.

Stove Mounters' No. 86.

Steel Range Workers' No. 34.

Central Trades and Labor Union  
of St. Louis and Vicinity."

"Shortly before this a furniture van that had canvas on both sides with great big letters "Boycott Buck's Stoves and Ranges," and it stopped in front of our store . . . that was the day of the labor parade . . . And there was four or five men on the wagon and they hollered and hooted . . . and there was quite a crowd there . . . and they pointed in there and says, "there are the boycotted goods, there are the Buck's stoves and ranges there."

This was a parade of fifteen thousand persons.

Pamplin, assistant secretary of plaintiff makes oath respecting the same visit of these three officers at which he happened to be present.

"They told me that they had just started in St. Louis that committee of three and they intended calling on all our customers with the intention of getting them to throw out Buck's stoves and ranges . . . They told me that they had a wagon driven up in front of the St. Louis House Furnishing Co. on Saturday, October 5th, and the wagon was covered with cloth and painted on the cloth were the words, "Boycott Buck's stoves and ranges."

Pamplin was then in St. Louis giving an exhibition of Buck's stoves near the store of the D. Sommers Stove Company.

"During the time I was there exhibiting that stove, I noticed that there were a great many circulars dropping in the alley and around the stove . . . each man seemed to bring up a circular and while there to drop it. The people came down Olive street from the west and I went up in that direction . . . I found a man on the corner of 12th

and Olive handing to each passerby one of these circulars and as I passed he handed me one."

The circular was as follows:

**UNFAIR  
TO  
ORGANIZED LABOR  
THE  
BUCK'S  
STOVES AND RANGES.**

Endorsed by Metal Polishers, Buffers and Platers' International Union of North America."

These instances are illustrative of the methods which were employed generally throughout the land, but there is an action of the annual convention of 1905, although in another case which shows the method of the organization too nicely to warrant its omission; a resolution fathered by the same Grout, was adopted, containing the following:

"Whereas, The members of the M. P., B. P., B. M., B. and S. W. Union of N. A., who were employed by the Wehrle Stove Company of Newark, O., were forced to cease work on June 2, 1905, on account of the unjust and arbitrary attitude assumed by the firm; and—

'Whereas, the entire output of said shop is disposed of through the mail order house of Sears, Roebuck & Co., of Chicago, . . .

'Resolved, That the American Federation of Labor, in its twenty-fifth annual convention assembled, place Sears, Roebuck & Co., of Chicago, Ill., on the unfair list of the American Federation of Labor and that the usual course in advertising the fact be followed."

Let it be never forgotten that these efforts were not confined to the direct customers of the plaintiff but were forthwith and universally extended to the customers of the plaintiff's customers; nor were they confined to stoves manufactured by the plaintiff but were immediately and universally extended against all the goods of whatever nature and description handled by plaintiff's customers and by whomsoever manufactured. Customers of the plaintiff who declined to sever business relations with it, or other merchants who because of the merit of plaintiff's goods and the needs and demands of the general public for them, found it advantageous to engage in their sale, straightway found themselves shriveling and withering in the relentless blight of this hideous pestilence. While the enormity of the result can not be portrayed in a word picture, yet if it be remembered that the following examples no more than typify that which was practically universal, a dwarfish illustration is conveyed. They serve to make clear not only the nature of the injury done to the business of the plaintiff, but also of that done to the business of its customers, as well as that done to the people of the several States by driving from their markets an article of interstate commerce, which their legitimate needs demanded and required. The following are quotations from some of the letters in evidence, the requirements of space commanding what brevity may be:

FROM W. E. EFFERT,  
TERRE HAUTE, INDIANA.

"Your company . . . should know the result of the boycott now being placed upon your stoves

ag.  
St. Louis  
nd demanded  
It's goods.  
subjects, and

in this city. Comparing our business of this year with last reveals the following:

October, 1906, business done over same month this year..... \$3,459 97  
November, 1906, business done over same month this year..... 2,925 13

Total deficit ..... \$6,385 10  
for 1907 in these two months.

... We should be doing an immense business now on stoves but will not be able to do it this season unless you can get matters adjusted some way so that this war will cease. We have spent a large amount of money advertising the Buck's stove and can't afford to see our business go glimmering in this style. What do you suggest in this matter?"

"METAL POLISHERS, BUFFERS, PLATERS, BRASS MOLDERS, BRASS AND SILVER WORKERS' UNION OF NORTH AMERICA.

Local.....

Sec'y. Address,.....

Affiliated with American Federation of Labor.  
An injury to one is the concern of all.

St. Louis, Mo., Sept. 27, 1906.

R. S. PACE LUMBER CO.,  
Wilburton, I. Ty.

GENTLEMEN: The Buck's Stove & Range Co. of this city has just made a shipment of stoves and ranges to your firm. I desire to inform you that this firm is unfair to organized labor. The metal polishers, buffers and platers were compelled to go on strike on account of the unfair treatment at the hands of this firm; the members of the above union had been working nine (9) hours per day for the past eighteen (18) months and the firm tried to force them to work ten (10) hours per day. I would be pleased to have you return the goods shipped to your firm, also notify Mr. Van Cleave the manager of the Buck's Stove & Range Co., that your firm will refrain from making any further purchases from them until they treat their employees as they should be treated, or as other manufacturers do.

Hoping that you will grant us this favor and thanking you for same, we remain,

Respectfully yours,

METAL POLISHERS, BUFFERS  
& PLATERS' UNION.

1310 Franklin Ave., St. Louis, Mo.

P. S.—These letters have all been written by the Vice Pres. of this Union in Dist. No. 12, St. Louis Pac. Libr. Co."

"ELECTROTYPE

MOLDERS AND FINISHERS' UNION, No. 17.  
INTERNATIONAL STEREOTYPERS AND ELECTROTYPERS' UNION.

WASHINGTON, D. C., April 17, 1907.

Mr. J. W. VAN CLEAVE,

President, Buck's Stove and Range Co.

DEAR SIR: The members of this organization have been instructed to refrain from purchasing the products of your company until such time as said company shall be on the unfair list.

H. C. POPPE, Secy.-Treas."

"CENTRAL LABOR COUNCIL OF LEXINGTON, KY.  
LEXINGTON, KY., March 4, 1907.

BUFORD RHODES FURN. CO.,  
Lexington, Ky

DEAR SIR: Your attention is called to the un-

fair attitude of the Buck's Stove Co., who refuses to accede to union conditions in their factory. We desire to advise you to the effect that we will be compelled to refrain from buying Buck's stoves unless that firm will act fairly with its employees.

We trust that this matter will receive your attention and that you take it up with the Buck's Stove Co., so that if possible, friction may be avoided.

Respectfully, A. BABLITZ, Secy."

"THE CENTRAL TRADES AND LABOR ASSEMBLY. Affiliated with the American Federation of Labor. Meets Sunday mornings at 9 o'clock at Labor Temple, No. 1512 Eighth avenue.

TAMPA, FLA., Dec. 14, 1906.

GENTLEMEN: By instructions from the Central Trades and Labor Assembly of Tampa, I hereby inform you that the Buck Stove and Range Company, of St. Louis, Mo., by their attitude to their employees, the members of Local No. 13, of St. Louis, are unfair to organized labor generally, and we will not patronize the products of the said company until they treat with and give their employees fair and just treatment and equitable rights.

We also request that you write the said Buck Stove and Range Company a personal letter, requesting them to make themselves right or square with their employees, or their products will be placed on our "We-Don't-Patronize" list.

Trusting you will comply with this request, I am,

Yours respectfully, W. F. KELLY,  
Recording Secretary, C. T. & L. A."

"ST. LOUIS STEREOTYPERS' UNION, No. 8.

ST. LOUIS, MO., May 22, 1907.

Mr. J. W. VAN CLEAVE,

President Buck's Stove and Range Company.

DEAR SIR: Your action in compelling the polishers, buffers, etc., to return to the ten-hour work day has caused the members of the Stereotypers' Union, No. 8, to pledge themselves not to patronize the Buck's Stove and Range Company or any dealer handling your goods.

Sincerely yours,

GEO. BOECKE, Secretary."

The following letters are all to plaintiff:

"PATTERN MAKERS' LEAGUE OF NORTH AMERICA. PATTERN MAKERS' ASSOCIATION, PITTSFIELD, MASS.

OFFICE OF SECRETARY.

PITTSFIELD, MASS., December 8, 1906.

Having received a communication from the Metal Polishers' Association describing the trouble they are having with your firm, we deem it wise as union brothers to help them all we possibly can, and with that point in view we will do all in our power to stop the sale of your goods in our city.

PATTERN MAKERS' ASSOCIATION."

"CENTRAL LABOR UNION.

Affiliated with American Federation of Labor. CAIRO, ILL., December 5, 1906.

The union men of Cairo at a meeting held Monday, December 3, instructed me to notify your firm that their patronage would be withheld from

Buck's stoves and ranges until the nine-hour day has been granted the metal polishers formerly employed by you, but who were compelled to strike because of your action in insisting on their returning to the ten-hour work day.

Yours truly, HARRY P. HELTON."

"THE JOHNSON COUNTY FEDERATION OF LABOR,  
HARTMAN, ARK., July 15, 1907.

I am hereby authorized to write you that the laboring men of this county will not patronize your goods until you get right with your men. As we think you do not treat Local Union No. 13, Platers and Buffers of St. Louis, with fairness, so we won't buy any of your goods in this county until you do.

Hoping you will get on the right side of the fence so it won't work a hardship on some of our local dealers, I remain,

Sincerely yours, ROBT. SCHOEFFLER,  
Rec. Sec."

The following from customers:

FROM H. L. MCELROY CO.,  
YOUNGSTOWN, OHIO.

" . . . We put your side of the matter before these gentlemen as clearly as we could, but, of course, made no impression on them. . . . We have been loyal to the line; . . . are in better shape this year . . . to push forward the business than ever before. It would be a serious calamity for us to be compelled to change our line at this time, but we can not endanger the success of our entire business by arousing the antagonism and animosity of the labor unions."

FROM ALONZO MILLER,  
STAUNTON, ILL.

" . . . This town is made up of miners, strictly union men, and at their last meeting . . . they made a motion and was carried that a miner would be fined if he bought a range or a heater from me that was bought from Buck's Stove Mfg. Co. So, gentlemen, I see the best thing I can do is not to handle your stoves and send back what I have on hand. So you send your man here and check me out. . . . If you don't send your man I will send these stoves and ranges back at once, as I will not ruin my business for your stoves and ranges."

FROM J. H. KAUFMAN & Co.,  
ABERDEEN, WASHINGTON.

" . . . We are advised by the trades council here that your stoves and ranges have been boycotted by the labor unions on account of strike. We trust that this difficulty will soon be settled, for if not, we will have to discontinue the handling of your line."

FROM CHRIST NIEBUR,  
BREESE, ILL.

"Enclosed find check for my account. . . . As I have heard that you are on the Unfair List and the union is strong here, I guess I can't buy any stoves from you until settled."

FROM BAKER & GIDCUMB,  
HARRISBURG, ILL.

" . . . The union people of this town have you people on the Unfair List here, and won't allow me

to handle any of your goods. . . . I am out now and would like to have or could use several stoves now, but I can't afford to handle them as long as you are on the Unfair List with the union people."

FROM F. W. SCHNECK & Co.,  
MILWAUKEE, WIS.

" . . . We have handled your stoves for 15 years; have heard of no labor troubles; have worked hard to get them up to a high standard; have worked up a large trade; have advertised liberally, and therefore would not like to drop the line.

We also are about ready to place an order for next season, but under present conditions are obliged to wait until you in some way adjust the matter with the union, as 90 per cent. of our trade is composed of laboring people."

FROM LOU COY HOUSE FURNISHING CO.,  
GREAT FALLS, MONTANA.

" . . . It had been our intention to put in a car of Buck's stoves and ranges this fall, and had advertised them very strongly, but our plans were knocked in the head by the unions in the towns coming to us and requesting us not to handle them, and as we are largely dependent on this trade, a request is equal to a demand."

TELEGRAM FROM MAQUIN AND CO.,  
GLOBE, ARIZ.

" . . . Article published here says that Federation of Labor has boycott on your goods. If this is true we can not use your goods. . . . Hold car. . . ."

FROM DUNCAN-BAKER HARDWARE CO.,  
MARION, ILL.

" . . . When the order was placed for these stoves we had not heard of your controversy with the labor organizations. . . . We can not afford to put the stoves on our floor for the purpose of selling them, and we believe you are too honorable to force us to keep them."

FROM PRINCE FURNITURE COMPANY,  
ALLENTOWN, PENN.

"There is a very important matter to which my attention has been forced and which threatens my interest in Pittston very seriously. . . . Pittston is the stronghold of organized labor and I hardly think it is prudent . . . situated as I am to antagonize the labor organizations there. They have been sending committees into our store from all sources. . . ."

FROM THE HOUSE FURNISHER,  
KENOSHA, WIS.

" . . . I need some stoves but can not handle them, the unions here are very strong and are here every two weeks or so to look over my stock. . . . I got your line well started but could not not buy any more until it is settled. . . . Always had nice dealings with you but I am forced to do this."

FROM THE SCHUNC-HARQUARDT CO.,  
TOLEDO, OHIO.

"Again we have been notified by the labor



unions that the Buck Stove and Range Co. are still on the unfair list, and that if we continue to handle the Buck stoves and ranges they will boycott us, not only on Buck's stoves and ranges but on all hardware. . . . Unless this matter can be settled up between you and the unions we will be compelled to take up another line of stoves."

FROM CAMPBELL, SPERRY & Co.,  
PIQUA, OHIO.

" . . . We regret . . . that it seems impossible for us to push your line as we hoped we might as we have done in the past for we certainly like the goods and we realize that it will mean a hard pull to put another line to the front where the Buck's stands but owing to the labor troubles which exist we shall be obliged to use some other line as the advertised line. . . . We have already lost considerable business this spring from the stove-works fellows which we know would have come to us except for the feeling that exists."

The number of such various letters was myriad, the foregoing only illustrative.

The plaintiff had contractual arrangements with merchants to the number of between two thousand and three thousand, but the obligations of contracts were likewise ignored as illustrated by the following quotations from the testimony, none of which is denied or even questioned by the defendants:

FROM FARRINGTON.

(Referring to the interview with Kreyling, Leberman, and Moran, already mentioned) "there was about \$5,000 worth of Buck's stoves that we had in there and I says, we have got our money invested in these and want to dispose of them, what would you advise us to do with them?" Kreyling says, "we don't care what you do with them, if you don't sell them." I says, "well if you just buy what we have got on hands I will agree not to buy any more, although we are under contract with the Buck's Stove and Range Company to take a certain amount of their goods and in return for them they give us the exclusive sale on Franklin avenue. . . ." I spoke to Mr. Kreyling after he left here that is the first time, I have since seen him; I asked him why he put us on the unfair list and boycotted us, they had not boycotted Sommers and McNichols, and he said they gave him some satisfaction. I says, "wasn't everything satisfactory when you left me?" "Well," he said, "you seemed to stand on your contract you had with the Buck Stove and Range Company and you wouldn't promise not to sell any more."

Arnold, vice-president of the D. Sommers Co. . . . "They asked me to simply quit handling Buck's stoves and ranges and to quit doing business with them until such time as this suit was settled. I told them that we had a contract with the Buck Stove and Range Company to take a certain number of stoves . . . They suggested that possibly we could get out of that contract if we wanted to. I told them we did not do that sort of business."

Templeton, secretary of the plaintiff, testifies that it had contracts with the Schunk-Marquardt Hardware Co., above referred to, and identifies numerous others in the like situation who have

been forced to sever their relations with the plaintiff. The method of reports required by the Federation itself is prolific of evidence showing the results of its efforts, as follows:

In the annual convention of the Federation of 1907 it was—

"Resolved, That each central body affiliated with the A. F. of L. be and is hereby requested to appoint a committee who shall conduct and manage a 'campaign of education' among the membership affiliated with their central body, as well as dealers in stoves and ranges in their locality and thoroughly inform them of the entire facts of the dispute between the Metal Polishers, Buffers, Platers, Brass and Silver Workers' Union of North America, the Brotherhood of Foundry Employees, also as to the attitude of J. W. Van Cleave and the Manufacturers' Association towards organized labor. Be it further—

Resolved, That all said committee shall report on the first of each month to the officers of the A. F. of L. the progress of the 'campaign of education' together with a complete list of all dealers in their locality who are handling and selling the product of the Buck Stove and Range Company. Be it further—

Resolved, That all commissioned organizers of the A. F. of L. shall report on the first of each month to the officers of the A. F. of L., the progress made in this 'campaign of education' by the different committees of the different central bodies in their respective districts, and also render such aid to all committees as lay in their power." (Resolution 49.)

A special committee reported to this convention as follows:

"Referring to Resolution No. 49, hereto attached by delegates A. B. Grout, and James J. Dardis . . . relative to a 'campaign of education' we fully agree with the purpose of the resolution but recommend that the details and manner of carrying out the spirit and object of the resolution be left in the hands of the President and Executive Council."

The report of the committee was concurred in. Extract from the report of the Committee on "Boycotts" to the same convention:

"We Don't Patronize List."

"We desire to call your attention to the action of the Minneapolis, Minn., convention on this important matter, and particularly to the recommendations thereon as concurred in by that convention. Conditions have not been materially changed since that time, and we therefore recommend that the Executive Council be instructed to remove from the "We Don't Patronize List" the names of firms in all instances wherein the Executive Council has knowledge that the national or international union responsible for the boycott are not aggressively pushing the same. We feel that the boycott should only be resorted to after all efforts at adjustment have failed, but when instituted by national, international, State, or central bodies it should be made so effective that speedy agreement between the international union firms will follow."

The convention was followed by this, amongst other things:

"The Buck's Stove Boycott."

"Official statement by the president of the American Federation of Labor concerning Mr. Van Cleave's Buck's Stove and Range Company."

**"EVERY LABOR UNION CALLED UPON TO ACT IN THE MATTER."**

WASHINGTON, D. C., Nov. 26, 1907.

**To All Organized Labor and Friends:**

"You undoubtedly are aware of the fact that the interests of the foundry employes and metal polishers have been greatly injured on account of the hostile action of the Buck's Stove and Range Co., of St. Louis, of which Mr. Van Cleave is president, and he is also president of the National Association of Manufacturers.

"As you are well aware, so inimical to the welfare of labor was the Buck's Stove and Range Co.'s management that the organization concerned felt obliged to declare the product of that company unfair. The workmen's organization appealed to the American Federation of Labor to indorse its action. After due investigation that indorsement was given and is still further affirmed. The circumstances leading to this action are so widely known that they need not be here recounted.

"Mr. Van Cleave, for the Buck's Stove and Range Company, brought suit against the American Federation of Labor and its executive council and has petitioned the court for an injunction to prohibit the American Federation of Labor from in any way advising organized labor and its friends of the fact that the Buck's Stove and Range Co. is unfair to its employes and for that reason its name is published upon the American Federation of Labor 'We Don't Patronize List.'

"The Court will soon give a decision on the legal issue which has been raised. We shall continue to maintain that we have the right to publish the name of the Buck's Stove and Range Co. upon the 'We Don't Patronize List.' Should we be enjoined by the court from doing so, the merits of the case will not be altered nor can any court's decision take from any man the right to bestow his patronage where he pleases.

"Mr. Van Cleave, president of the Buck's Stove and Range Co., also president of the National Association of Manufacturers is raising a war fund of \$1,500,000 to crush organized labor. You already know the attempts that have been made with a part of that money to assassinate the characters of the active men in the labor movement, to corrupt them and buy them over, much of which was exposed at the recent Norfolk convention of the American Federation of Labor and more of which will be published in a pamphlet about to be issued.

"Bear in mind that you have a right to decide how your money shall be expended.

"You may or may not buy the products of the Buck's Stove and Range Company.

"There is no law or edict of court that can compel you to buy a Buck's stove or range.

"You can not be prohibited from informing your friends and sympathizers of the reason why you exercise this right. You have also the right to inform business men handling the Buck's Stove and Range Company's products of its unfair attitude toward its employes and ask them to give their sympathy and aid in influencing the Buck's Stove and Range Company to deal fairly with its employes and come to an honorable agreement with the union primarily at interest.

"It would be well for you as central bodies, local unions and individual members of Organized Labor and sympathizers, to call on business men in your respective localities, urge their sympathetic co-operation and ask them to write to the Buck's Stove and Range Company, of St. Louis, urging it to make an honorable adjustment of its relations with Organized Labor.

"Act energetically and at once. Report the result of your effort to the undersigned.

"SAM'L GOMPERS,

President A. F. of L.

Attest:

FRANK MORRISON, Secretary.

By order of the Executive Council of the American Federation of Labor."

Each issue of the *American Federationist* for the months of June, July, August, September, October, November, and December, 1901, and January, March, April, and May, 1902, contained a heading, "What Our Organizers are Doing from the Atlantic to the Pacific," with the following explanation, "Under this head is presented to our readers the latest, most accurate, direct and comprehensive news of industrial organization throughout the country for the past month. No magazine in this or any other country publishes so unique a report or employs so large a staff of newsgatherers. We have eight hundred volunteer organizers continually giving their services to foster and promote the Organization of wage-workers into Unions. A condensed report of their work is given in these columns. These organizers are themselves men of the factory, mine and mill. They participate in the struggles of our wageworkers for better conditions, help to win victories, aid in securing legislation—in short, do the thousand and one things that go to round out the practical labor movement. The method of collecting this information is simplicity itself. Early in the month each organizer receives from the headquarters of the American Federation of Labor a blank form, upon which the report is to be written, with a stamped return envelope. The summary given in the following pages indicates how prompt and full are the replies and how remarkable is the activity in the trade union movement in all parts of the country."

In these eleven issues appear 205 distinct and separate reports emanating from all the territory of the United States comprised between Maine upon the northeast, Oregon upon the northwest, Florida upon the southeast, and Texas on the southwest, from which the following are taken at random and to which all are of similar import:

"Oklahoma, Okla. Territory.

"Organizers report 'All American Federation of Labor boycotts are being pushed.'"

"Jamestown, New York.

"Organizer H. S. Whiteman reports: 'We have followed the suggestion of President Gompers, and all boycotts are published every week in our Union Advocate.'"

"Clinton, Iowa.

"Organizer G. C. Campbell reports: 'All American Federation of Labor boycotts are being systematically pushed and we have succeeded in suppressing the sale of Queen Quality Shoes.'"

"Tampa and vicinity, Florida.

"Organizer C. A. Winsett reports: 'The Trades

Assembly has decided to push the boycott against the *New York Sun*, and will refuse to purchase anything advertised in its columns."

The system was thus well developed in 1902; and had grown until in 1906, Gompers, president, reported to the Annual Convention of that year that

"there were more than 1,200 organizers representing every State in the Union directly commissioned by the American Federation of Labor."

\* \* \*. There are published now 185 official journals issued monthly or oftener by International Unions, and 179 weekly labor papers, nearly all devoted to the defense and advocacy of laborers' interests, nearly all of which are stoutly espousing the trade union movement and the American Federation of Labor."

Such is a meager portrayal of the status at the time of the preliminary injunction; such the procession of evils which it sought to reach and to arrest awhile, until the merits of the controversy could be judicially ascertained, according to due process of the law of the land; its sketching though tedious and laborious has seemed essential here, in order to an understanding of the relationship which the doings and contrivances of the respondents subsequent to the injunction, bear to the execution of the pre-established interdiction and the uninterrupted consummation of its ends.

What word suffices to describe the picture; need one be chosen? Of what moment that any should? What one word boasts the power? The uttermost speech of human kind is barren of term or synonym which measures to the task.

Then dissertation over the philological import of "boycott" is not proposed; rather, deliberately laid aside; lest the enormities of fact be blanketed by terms, and the conclusions deduced from them hereafter be sought to be juggled from their true foundation by some empty warfare over words; whoso discovers the foredescribed enterprise to run along with his own conception of "boycott," as well as he of sensibility so refined as to be agitated at the association of such doings with so gross a term, will be conscious of no conflict against their respective opinions on the point.

And so with "conspiracy"; a word held ever in poor repute by those to whose joint projects it deserves to be applied; agreements compassing lawful purposes the law calls "contracts"; to distinguish them from agreements compassing unlawful purposes, the law terms the latter "conspiracies"; there is no other difference; and in either case, whether the agreement be expressed in distinct and definite form, or exists only in a mutual, co-operative understanding.

Prior to the enactment of the "Sherman Act," by the Congress of the United States, it was at Common Law a crime for two or more persons to combine for the purpose of consummating an unlawful act, whether that unlawful act was the ultimate object of the combination or whether the unlawful act was but a step to the achievement of an ultimate lawful design; were an unlawful act anywhere projected in the agreement the crime was complete in the mere agreement itself, although no steps were ever taken toward its execution and although its

ultimate purpose was good. That an individual should pay his debts was commendable; but an agreement to attain that desirable end through the method of beating him over the head, was a crime; and yet "unlawful acts," are not only those which are so grievously unlawful as to be public crimes; a violation of any civil right of another is none the less "unlawful" because it happens to be less than a crime.

When persons enter into a "contract" their status with respect to each other and the balance of mankind is straightway altered; each is vested with rights which he did not have before, in that each is entitled from the other to the performance of the obligations of that contract; the right to the performance of these obligations the balance of mankind are required to respect; not even the law making power of all the States of the Union severally assembled is potent to deprive either by even a jot or tittle and with these obligations cannot interfere; for in the Constitution is it written, "No State shall \* \* \* pass any law impairing the obligation of contracts." When came Labor Unions to be of greater power and majesty than these? The breach of a contract by a party to it being "unlawful" (not unlawful in the sense of criminality, but unlawful in the sense of a violation of the "civil" right to its performance), the act of a third person in persuading him into the breach is equally "unlawful"; and if a combination of two or more persons contemplates the breach of a contract through even the persuasion of a party to the contract, the combination comprises an "unlawful act" and the combination alone and in itself is a common law crime.

Second. A business, be it mercantile, manufacturing or other, which has for a long time been successfully operated and developed possesses a greater value than a like business newly launched, although the latter be exactly equivalent in respect of stock, equipment, monies and all other physical possessions; the basis of the excess in value of the one over the other is termed the "good will"; it is the advantage which exists in established trade relations with not only habitual customers but with the trading public generally; the advantage of an established public repute for punctuality in dealing, or superior excellence of goods or product; finally, in last analysis, a "good will," when it exists is one return for the expenditure of time, money, energy, and effort, in development; it is a thing of value in the sense that it is a subject of bargain and sale; oft times of a value which exceeds that of all physical assets taken together; in that it may possess exchange value, it may be "property"; when it does possess "exchange value," property it is; and a combination for the purpose of destroying it is for an "unlawful act," whether you call the combination a "Labor Union" or a "Trust." There is no room here for confusion with cases of business competition between individuals, or individual firms; competition gives to the public the advantage of choice, and thereby conduces to the public advantage by stimulating a betterment of product; elimination either promotes monopoly or drives utterly from the markets and from the reach of the

public a product which perchance may be generally necessary or universally desired; these ends an individual single handed is impotent to achieve, but a combination if sufficiently far-reaching may bring them readily to pass; therein is the combination unlawful, while the single-handed project of an individual is not.

Thrid. Congress has seen fit to enact (1 Sup., 762):

"An Act to protect trade and commerce against unlawful restraints and monopolies.

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

"Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court."

The plaintiff's trade was "among the several States"; its product an article of "commerce" among them; the confederation of the various defendants was a "conspiracy" in restraint of both (Loewe v. Lawlor, 205 U. S., 274), although if fault with that word is found, it may be laid aside and "combination" substituted; for respecting the case here it is all one.

From the foregoing it ought to seem apparent to thoughtful men that the defendants to the bill, each and all of them have combined together for the purpose of—

1. Bringing about the breach of plaintiff's existing contracts with others;

2. Depriving plaintiff of property (the value of the good will of its business) without due process of law;

3. Restraining trade among the several States;

4. Restraining commerce among the several States.

And if either conclusion 1 or 2 is accurate, are guilty of the Common Law crime, "conspiracy"; if either conclusion 3 or 4 is accurate, guilty of the crime defined by the statute; there is in my judgment no escape from either conclusion of the four; under either aspect of the matter their ultimate purpose is unlawful, their concerted project an offense against the law, and they are guilty of crime.

It was to stay the unlawful impairment of the plaintiff's contracts; stay the destruction of the value of its business "good will"; stay the restraint of trade among the several States; stay the restraint of commerce among them and preserve an existing status until the case could finally be heard, that the injunction was designed; in so far as the devices and instrumentalities employed by the plot were numerous and elaborate, the plot itself was responsible for the extent to which the injunction must proceed to those details if it would reach plot and plotters. Here is the injunction order:

"This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued

upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in said aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copy or copies of the American Federationist, or any other printed or written newspapers, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the 'We Don't Patronize,' or the 'Unfair' list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention to the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be 'Unfair,' or that it should not be purchased or dealt in or handled by any dealer, tradesmen, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's prod-

uct, either directly, or through orders, directions or suggestions to committees, associations, officers, agents, or others, for the performance of any such acts or threats as hereinabove specified and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

"And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, upon the service of a copy thereof upon them or their solicitors or solicitor of record in this cause; Provided, the complainant shall first execute and file in this cause, with a surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction."

That Gompers and others had in advance of the injunction determined to violate it if issued, and had in advance of the injunction counseled all members of Labor Unions and of the American Federation of Labor and the public generally to violate it in case it should be issued appears from the following, which references point out also the general plan and mutual understanding of the organizations and their various members:

#### PRE-DETERMINATION TO VIOLATE.

Extract from Report of the Proceedings of the Convention of the American Federation of Labor, 1906, page 14:

"Report of Samuel Gompers, President.

#### CITY CENTRAL BODIES—THEIR IMPORTANCE AND DUTY.

\* \* \* "Our international trade unions and the American Federation of Labor are dependent upon local central bodies to carry out the program or policy decreed by the general labor movement. \* \* \* but the practical assistance they can and do render the labor movement in executing the plans devised for the protection and promotion of the interests and rights of the toiling masses is incalculable. They are not only the local municipal council of industry dealing with sociological problems, but they are also the concrete power to enforce and execute within the jurisdiction of their existence the judgment of the highest court in the realms of labor of America, the American Federation of Labor. \* \* \*

"When, however, the final word has been

spoken by the court of last resort of labor, composed of the representatives of the intelligent organized wage-earners of America, to these at least conformity by our central bodies is essential to the safety and the well being of the labor movement. \* \* \*

"It is gratifying to be in a position to report that there is a constantly increasing manifestation of loyalty and faithful adherence by our central bodies to the general trend, policy, decisions and laws of the American Federation of Labor, but the greatest good cannot be accomplished nor the largest degree of success achieved so long as there is even one central body which for any reason hampers or blocks the consummation of the attainment of the common concert of action."

Extract from Report of Proceedings of Convention of American Federation of Labor, 1897:

"Report of Samuel Gompers, President.

"Boycotts and Court Decisions."

"Recently one of the branches of the Federal Courts decided by a majority vote that the boycott is illegal." \* \* \*

"\* \* \* we should demand the change of any law which curbs the privilege and the right of the workers to exercise their normal and natural preferences. In the meantime we should proceed as we have of old, and wherever a court shall issue an injunction restraining any of our fellow workers from placing a concern hostile to labor's interests on our UNFAIR list; enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the UNFAIR firm and the grievance complained of, the words 'We have been enjoined by the courts from boycotting this concern' could be added with advantage."

In his report as president, to the 1907 Convention of the American Federation of Labor, he stated:

"IN THE MEANTIME WE SHOULD PROCEED AS WE HAVE OF OLD, and wherever a COURT shall issue an injunction restraining any of our fellow workers from placing a concern hostile to labor's interest on our UNFAIR list; enjoining the workers from issuing notices of this character, the further suggestion is made that upon any letter or circular issued upon a matter of this character, after stating the name of the unfair firm and the grievance complained of, the words 'We have been enjoined by the courts from boycotting this concern' could be added with advantage."

And when on the stand as a witness in this cause, on January 30, 1908, his attention was called to that portion of his report, he replied in respect to it:

"Q. Have you ever recalled that suggestion?

"A. No, sir; I would rather reaffirm it."

In the November, 1902, number of the *Federalist*, in its editorial columns, he printed and published:

"We beg to say plainly and distinctly to Mr. Merritt and fellow sympathizers THAT THE AMERICAN FEDERATION OF LABOR WILL NEVER ABANDON THE BOYCOTT, and that the threats against the Federation are idle, impotent and impudent."

A day or two after the filing of the bill herein

he publicly stated in an interview with three representatives of prominent newspapers:

"When it comes to a choice between surrendering my rights as a free American citizen or violating the injunction of the courts, I do not hesitate to say that I shall exercise my rights as between the two."

On September 5, 1907, at the Jamestown Exposition, in the course of a Labor Day speech, delivered as a public address, he said:

"An injunction is now being sought from the Supreme Court of the District of Columbia against myself and my colleagues of the Executive Council of the American Federation of Labor. It seeks to enjoin us from doing perfectly lawful acts; to deprive us of our lawful and constitutional rights. So far as I am concerned, let me say that never have I, nor ever will I, violate a law. I desire it to be clearly understood that when any court undertakes without warrant of law by the injunction process to deprive me of my personal rights and my personal liberty guaranteed by the Constitution, I shall have no hesitancy in asserting and exercising those rights."

In the October, 1907, issue of the Federationist he published the same at length in the editorial columns, and in the same columns of the same number stated:

"So long as the right of free speech and free press obtains, we shall publish the truth in regard to all matters. If any person or association challenges the accuracy of any of our statements, we are willing to meet him or them in the courts and defend ourselves. So long as we do not print anything which is libelous and seditious, we propose to maintain our rights and exercise liberty of speech and liberty of the press. If for any reason, at any time, the name of the Buck's Stove and Range Company does not appear upon the 'We Don't Patronize' list of the American Federationist (unless that company becomes fair in its dealings toward labor), all will understand that the right of free speech and free press are denied us; but even then this will not deprive us, or our fellow workmen and those who sympathize with our cause, from exercising their lawful right and privilege of withholding their patronage from the Van Cleave Company—The Buck's Stove and Range Company of St. Louis."

"So far as we are personally and officially concerned, we have fully stated our position in the American Federationist and elsewhere."

"Do not fail to keep the Buck's Stove and Range Company of St. Louis in mind and remember that it is on the unfair list of organized labor of America."

In a column in the same issue headed "Editorial Notes," he used the following language:

"So labor must not use its patronage as it will—that is, if Van Cleave of Buck's Stove and Range Company fame has his way. But what vested right has that company in the patronage of labor or of labor's friends? It is their own to withhold or bestow as their interest or fancy may direct."

"They have a lawful right to do as they wish, all the Van Cleave's, all the injunctions, all the fool or vicious opponents to the contrary notwithstanding."

"Wonder whether Van Cleave will try for an injunction compelling union men and their friends to buy the Buck's Stove and Range Company's unfair product?"

"Until a law is passed making it compulsory upon labor men to buy Van Cleave's stoves we need not by them, we won't buy them and we will persuade other fair-minded, sympathetic friends to co-operate with us and leave the blamed things alone."

"Go to ——— with your injunctions."

(He has taken an oath in this case here, that he did not mean "Go to hell with your injunctions.")

"The Buck's Stove and Range Company of St. Louis (of which Mr. Van Cleave is president) will continue to be regarded and treated as unfair until it comes to an honorable agreement with organized labor. And this, too, whether or not it appears on the 'We Don't Patronize' list."

After the motion for the injunction had been heard and submitted to the Court, and pending its decision there were prepared, published and despatched to each secretary of the 25,000 or 30,000 unions an "Urgent Appeal" for funds, accompanied by a circular letter signed by Gompers and Morrison as "President" and "Secretary" respectively, which contained:

"The Court will soon give a decision on the legal issue which has been raised. We shall continue to maintain that we have the right to publish the name of the Buck's Stove & Range Company upon the 'We Don't Patronize List.' Should we be enjoined by the Court from doing so, the merits of the case will not be altered nor can any court decision take from any man the right to bestow his patronage where he pleases."

"Bear in mind that you have a RIGHT to DECIDE HOW YOUR MONEY SHALL BE EXPENDED."

"You may or may NOT buy the products of The Buck's Stove & Range Company."

"There is no law or edict of court that can compel you to buy a Buck's Stove or Range."

"You cannot be prohibited from informing your friends and sympathizers of the reason why you exercise this right. You have also the right to inform business men handling the Buck's Stove & Range Company's products of its unfair attitude toward its employees and ask them to give their sympathy and aid in influencing the Buck's Stove & Range Company to deal fairly with its employees and come to an honorable agreement with the Union primarily at interest."

"It would be well for you as central bodies, local unions and individual members of organized labor and sympathizers to call on business men in your respective localities, urge their sympathetic co-operation and ask them to write to The Buck's Stove & Range Company of St. Louis, urging it to make an honorable adjustment of its relations with organized labor. Act energetically and act at once. Report the result of your effort to the undersigned."

After the injunction issued the effect of the suggestions thus made, the counsel thus given blazed through the labor press over the land



in the manner of the following fac-simile reproductions:

### One Way of Doing It!

"Here is one way of announcing a recent court decision, taken from the Galesburg 'Labor News':

"It is unlawful for the American Federation of Labor to

### BOYCOTT Buck Stoves and Ranges

"Justice Gould in the Equity Court of the District of Columbia, on December 17th, handed down a decision granting the company a temporary injunction preventing the Federation from publishing this firm as

### UNFAIR To Organized Labor

"The above could hardly be construed to conflict with the law, since it is a statement of facts."

The Labor Journal (Rochester, N. Y.), January 10, 1908.

### ANNOUNCEMENT

"It is unlawful for the American Federation of Labor and its members and sympathizers to

### BOYCOTT The Buck's Stove and Range Co.

"Justice Gould in the Equity Court of the District of Columbia, on December 17th, handed down a decision granting the company a temporary injunction preventing the Federation from publishing the fact that the

### Buck's Stove & Range Co.

is on the

### Unfair List of Organized Labor

Springfield (Missouri) Tradesman, January 18, 1908.

### ANNOUNCEMENT

"It is unlawful for the American Federation of Labor and its members and sympathizers to

### BOYCOTT The Buck's Stove & Range Co.

"Justice Gould in the Equity Court of the District of Columbia, on December 17th, handed down a decision granting the company a temporary injunction preventing the Federation from publishing the fact that the

### Buck's Stove & Range Co.

is on the

### Unfair List of Organized Labor.

St. Louis has 45,599 Union Members.  
St. Louis Labor, January 18, 1908."

### BOYCOTT BUCK'S STOVES AND RANGES

"Justice Gould, in the Equity Court of the District of Columbia, on Dec. 17, handed down a decision granting the company a temporary injunction preventing the Federation from publishing this firm as

### UNFAIR TO ORGANIZED LABOR.

"(This is not in conflict with the injunction, but a statement of fact.)

The Cleveland (Ohio) Citizen, January 18, 1908."

### SINCE THE INJUNCTION.

Having in mind what may be in the foregoing delineation which indicates that either of the three respondents did before the issuance of the injunction deliberately determine to willfully violate it and did counsel others to do the same, let me now turn to their sayings and doings since the decision of Mr. Justice Gould was formally announced, and the order of injunction itself put into technical operation by the giving of the injunction bond. On December 17, 1907, the opinion of the Court was filed in the case; the order of injunction was entered on December 18th; the giving of the undertaking required by it was consummated on December 23rd, and I am disposed now to look at the separate conduct of each respondent with a view of recording his individual responsibility in sufficient detail.

### GOMPERS.

He testified that the January number of the American Federationist, edited by him as President of the American Federation of Labor, still contained the name of the plaintiff upon its "unfair list," and contained also the following:

"A limited number of the American Federationist for 1907, bound in two volumes, may be had on application to this office. The 1907 volumes are bound in the same style as the preceding years.

"The official printed proceedings of the Norfolk convention of the A. F. of L. are now ready and can be had upon application by mail, 25 cents per single copy, \$20 per hundred. Postage prepaid by the A. F. of L."

"The said proceedings of the Norfolk convention contain, at page 91, the name of petitioner as being on the 'Unfair' list of the American Federation of Labor."

He testifies that more than 10,000 copies were hurriedly printed in Washington:

"Q. When were they received?

"A. About December 20th or 21st.

"Q. That is, they were received from the printer about December 20th or 21st?

"A. About that; I am not sure as to the date, but I made it a special purpose to get it out a day or two earlier, and if that is the purpose of your question, I will tell you.

"Q. What is it?

"A. It was to issue the American Federationist before the undertaking had been made, so as to make the injunction of Justice Gould effective.

"Q. You knew at the time the order had been made?

"A. Yes, sir. . . .

"Q. Were these 10,000 copies distributed?

"A. Yes, sir.

"Q. From the office?

"A. Yes, sir.

"Q. In what way?

"A. Through the mails, through carriers, through direct purchases. . . .

"Q. Have you Unions in California?

"A. Affiliated?

"Q. Yes.

"A. We have local unions affiliated to International Unions.

"Q. Yes; and to whom these were sent?

"A. Yes, sir; but I suppose they were in transit.

"Q. That they would be in transit on the 23rd?

"A. More than likely, sir. I did not give it a thought, but I suppose so now you ask me the question. I never gave it a thought. . . .

"Q. At the time you sent these out through the mails you supposed they would be in transit?

"A. I did not suppose anything of the kind. I did not give the matter a thought as to whether it was California, or Kalamazoo, or the District of Columbia."

In this he over-reached himself; for the mails were his agents, chosen by him as the medium for delivery to distant points; and if, after the injunction became operative he violated it through the instrumentality of his own hands or through the instrumentality of another medium of his own preference, is all one. Had he carried the copies to California himself, what difference from sending another with his errand?

In the February number of the 1908 American Federationist he published over his own name a lengthy editorial concerning the order, which amongst other things stated:

"With all due respect to the court, it is impossible for us to see how we can comply with all the terms of this injunction," and further stated there:

"This injunction cannot compel union men or their friends to buy the Buck's stoves and ranges. For this reason, the injunction will fail to bolster up the business of this firm, which it claims is so swiftly declining.

"Individuals, as members of organized labor, will still exercise the right to buy or not to buy the Buck's stoves and ranges. It is an exemplification of the saying that 'You can lead a horse to water, but you can't make him drink,' and more than likely these men of organized labor and their friends will continue to exercise their right to purchase or not purchase the Buck's stoves and ranges."

On other pages of the same issue of the American Federationist he published the order itself at length prefacing it by a heading printed in larger type of which the following is a fac-simile, as far as the quotation goes:

### "ORDER GRANTING INJUNCTION.

"In the official organ of the National Association of Manufacturers, one of the counsel for the Buck's Stove and Range Company de-

clares that punishment for violation of the injunction issued by Justice Gould, against the American Federation of Labor, applies particularly to those within the territorial limits of the District of Columbia who violate the terms of the injunction. That those who violate the terms of the injunction in any other part of the country outside of the District of Columbia can be punished only when they thereafter come within the territorial limits of the District of Columbia. Counsel for the American Federation of Labor assure us that this construction of the court's order is accurate.

### THE INJUNCTION—BUCK'S STOVE AND RANGE CO. vs. AMERICAN FEDERATION OF LABOR.

"This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendant's return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is, thereupon by the court, this 18th day of December, A. D. 1907, ordered of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term 'Unfair' or with the 'We Don't Patronize' list, or with any other phrase, word or words of similar import, and from publishing or \* \* \* \* \*

The evidence is so suggestful of a finding by the Court that this was for the purpose of inducing persons beyond the District of Columbia to violate the injunction and for the purpose of defeating it, that that finding is now made.

In the March, 1908, number of the American Federationist he published in the editorial columns this:

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

In the April, 1908, number this:

"The temporary injunction issued by Justice Gould, of the Court of Equity, of the District of Columbia, in the (Van Cleave) Buck's Stove and Range Company of St. Louis against the American Federation of Labor, its officers and all others, has been made permanent. The case will now be carried to the Court of Appeals of the District of Columbia.

"It should be borne in mind that there is no law, aye, not even a court decision, compelling union men or their friends of labor to buy a Buck's stove or range. No, not even to buy a Loewe hat."

And in another column of that issue, this:

"Bear in mind that an injunction issued by a court in no way compels labor or labor's friends to buy the product of the Van Cleave Buck's Stove and Range Company of St. Louis.

"Fellow workers, be true and helpful to yourselves and to each other. Remember that united effort in cause of right and just must triumph."

And in the course of a public address to a large gathering of working people in the city of New York on April 19, 1908, he said:

"They tell us that we must not boycott. Well, if the boycott is illegal, we won't boycott. But I have no knowledge that any law has been passed or any order issued by any court compelling us to buy, for instance, a range or a stove from the Buck's Stove and Range Company. You know that myself and several are enjoined from telling you, and we are not prepared to tell you, that the Buck's Stove and Range Company is unfair. There are a number of men who have been having suit brought against them for two hundred and forty thousand dollars. That is not very much, between you and me; but a few hatters in Danbury, Connecticut, are being sued for saying that Loewe and Company, hat manufacturers, of Danbury, Connecticut, are unfair. I am not prepared to say that that is in violation—that they are unfair.

"Of course, in the case of the Buck's Stove and Range Company, if I told you that the Buck's Stove and Range Company was still unfair, when I got back to Washington tomorrow, or some place where they say people play checkers with their noses—well, as I say, I am not prepared to tell you that these things are unfair. But there is no law, no court decision that compels you to buy them, nor does any law compel you to buy anything without the union label."

And in the editorial column of the May, 1908, number of the American Federationist, under his own name, at page 383, the said Samuel Gompers published the following statement:

"I want to assure you on my word of honor that so long as I live I will never buy a Loewe hat or a Buck's stove or range until these gentlemen come into agreement with organized labor and grant us conditions of fairness. Then they will get support and help. Until then, you may call it by any other name—boycott or no boycott—but I won't buy your hats anyhow."

And in a public address delivered before a large gathering of working people on, to-wit: The first day of May, A. D. 1908, in the city of Chicago, Illinois, made the following statement:

"I might say just parenthetically about the hatters' case that you are not now permitted to boycott the Loewe hats, but I want to call your attention to the fact that there is no law compelling you to wear a Loewe hat, nor has any judge issued a mandamus compelling you to buy a Loewe hat. That applies equally to Mr. Van Cleave's stoves and ranges. And, by the way, I don't know why you should buy any of that sort of stuff. I won't; but that is a matter to which we can refer more particularly in our organizations."

And, thereafter, for the purpose of more widely disseminating the statement, published the same in the June, 1908, number of the American Federationist, at pages 467 and 468, and in the editorial column of the July, 1908, number of the American Federationist, at page 531 thereof, over his own name:

"The Supreme Court of the District of Colum-

bia has made permanent the injunction issued by Justice Gould enjoining the American Federation of Labor, its officers, its affiliated unions and their members and friends from declaring that the Van Cleave Buck Stove and Range Company of St. Louis is on the unfair list of the American Federation of Labor or the publication of that statement in the American Federationist. An appeal will be taken to the Court of Appeals of the District of Columbia, and, if necessary, to the United States Supreme Court. The injunction does not compel anyone to buy the Van Cleave Buck Stoves and Ranges, nor has any decree been issued compelling anyone to buy Loewe's hats."

The Court finds from the evidence that all of which was said, all of which was done, all of which was published, all of which was circulated in wilful disobedience and deliberate violation of the injunction, and for the purpose of inciting and accomplishing the violation generally, and in pursuance of the original common design of himself and confederates, to

1. Bring about the breach of plaintiff's existing contracts with others;
2. Deprive plaintiff of property (the good will of its business) without due process of law;
3. Restrain trade among the several States;
4. Restrain commerce among the several States.

Since the filing of these very charges in contempt against him, in the September, 1908, Federationist, Gompers published:

" . . . Money makes the mare go, and Mr. Van Cleave's money is making this contempt case go. . . . But labor will rise in its might and crush Mr. Van Cleave and all his money that may work now or in the future for restricting labor in its fundamental rights of free speech and free press."

In that same number was the following in editorial:

"We have also witnessed in the past year most serious judicial invasion and usurpation of individual liberty and human freedom by the abuse of the writ of injunction."

" . . . An attempt has been made by the abuse of the writ of injunction to deny and prohibit the freedom of speech and the freedom of the press; and men have been cited to show cause why they should not be punished purely for the right of free press and free speech—rights not only natural and inherent in themselves, but guaranteed by the Constitution of our country, and which our forefathers fought to save, and which a free people never dreamed would ever be placed in jeopardy."

And in a public address in Indianapolis on September 29, 1908, said:

" . . . I want to say this to you and to all that it may concern, that so long as I retain my health and my sanity, I am going to speak upon any subject on God's green earth, and as a citizen of this country and as editor of the American Federationist, the official monthly magazine of the American Federation of Labor, so long as I am endorsed by labor of the United States with the performance of duties of that office, I will discuss every subject which forms itself to my judgment as being just and

right. . . . The injunction which Judge Taft issued while upon the bench is now the basis for the injunction against the American Federation of Labor and its officers and the great rank and file of the labor organizations of the country, just as in issuing the injunction of the Buck Stove & Range Co. quoted Judge Taft injunction in support of his, Judge Gould's, position. Do you know that about two weeks ago John Mitchell, Frank Morrison, and I were three of us hailed to court to show cause why we should not be punished, why we should not be sent to jail for contempt of court. . . . I want to say to you that if the injunction is strictly construed and enforced, I am in contempt of court again for telling you that, but I propose to discuss this thing, and I do not want to be in contempt of court, but I propose to discuss it. The injunction prohibits me from mentioning the above stove and range company in this case to anybody, either by word of mouth or by letter, or either in letter or circular or any way, but I can't help that. I must discuss it. I will explode if I don't, and I don't want to go to jail but I prefer that to exploding. I don't know what his honor, the judge, may do with Frank Morrison and John Mitchell and I. . . . The judge need not give any explanation as to why he finds that a man has not shown good cause, why he should not be punished for contempt of court. He issues the prescribed injunction to its extent; he hails to the court the man who he charges as having violated it, and then he sets the punishment as his judgment, his opinion. If he has had a good night he may be lenient with the culprit; if he has had a bad night, Lord pity the poor fellow; and I suppose good and bad nights are frequently controlled by good or bad evenings before the night."

In a public address delivered in Baltimore on October 26th, Gompers used the following language:

"The injunction issued against me by Judge Gould was based on Judge Taft's decisions. By that injunction I am restrained from talking to you about this case. No labor leader can mention it in speech or circular. I am enjoined from telling you I won't buy a Buck's stove or range. But I won't buy one just the same. I am enjoined from telling you there is no law compelling you to buy one; but there isn't such a law.

"Because of this case I am on trial, and may have to go to jail. There is no fun in going to jail, and I don't want to go; for no man would feel more keenly the sting of having his liberty restrained. But the whole world would be a narrow cage were I denied the freedom of speech. I say these things with a full consciousness of what the responsibility may be. But jail or no jail, I'm going to discuss the principles of liberty."

MORRISON.

Frank Morrison is, and has been, Secretary of the American Federation of Labor, stationed at its headquarters in Washington, and as such appeared and took part in the proceedings of the annual conventions of the American Federation of Labor. He was present at the annual convention of 1897, took part in and was ac-

quainted with its proceedings and under its directions prepared, published and circulated the official report of its proceedings.

He took part in the preparation, publication and distribution, having with full knowledge of its contents signed in his capacity as Secretary the circular letter of November 26, 1907, above quoted.

With knowledge of its contents he aided in the preparation, circulation and distribution, prior to December 23, 1907, of the same copies of the January, 1908, number of the American Federationist that are hereinbefore specified against Gompers and with the same purpose and intent.

He signed and took part in the preparation of and dispatched to each Secretary of the 25,000 to 30,000 unions, along with the "Urgent Appeal," the circular letter hereinbefore specified against Gompers, with full knowledge of its contents and with the same purpose and intent.

He took part in the preparation, publication, circulation and distribution of the April, 1908, number of the American Federationist, with full knowledge of its contents as hereinbefore specified against Gompers and with the same purpose and intent.

With knowledge and approval of the other writings and speakings hereinbefore specified against Gompers he took part in the circulation and distribution in large numbers of each and every issue of the Federationist containing them, as hereinbefore specified against Gompers and with the same purpose and intent.

JOHN MITCHELL.

John Mitchell is and was one of the Vice-Presidents of the American Federation of Labor, one of the members of its Executive Council and until April, 1908, was President of the United Mine Workers of North America.

The United Mine Workers of North America, an organization composed of approximately 2,700 local unions and 300,000 members throughout the United States, was affiliated with the American Federation of Labor, and published an official newspaper called the American Mine Workers Journal.

In a book called "Organized Labor, Its Problems, Purposes and Ideals," published in 1903 by John Mitchell, he states:

"Moreover, when an injunction, whether temporary or permanent, forbids the doing of a thing which is lawful, I believe that it is the duty of all patriotic and law abiding citizens to resist or at least to disregard the injunction."

On December 13, 1906, at a meeting of the National Civil Federation, Mitchell said:

. . . "If a judge were to enjoin me from doing something that I had a legal, a constitutional and a moral right to do I should violate the injunction. I shall as one American preserve my liberty and the liberties of the people even against the usurpation of the Federal Judiciary."

. . . which may aid in determining whether an act in violation of this particular injunction was likely for him, and if had was wilful.

He signed with full knowledge of its contents the "Urgent Appeal," which accompanied the twenty-seven odd thousand circular letters to

the various secretaries as hereinbefore specified against Gompers and Morrison; and with full knowledge of their contents, counseling their distribution; and with the same purpose and intent.

On the 25th of January, 1908, at the Annual Convention of the United Mine Workers of America, Mitchell, its President, being in the chair, the following resolution was passed:

"RESOLUTION No. 73.

"Whereas, The Buck's Stove and Range Company, of St. Louis, Mo., have taken legal steps to prevent organized labor in general, and the officers and executive committee of the A. F. of L., in particular, from advertising the above named firm as being on the 'unfair' or 'we don't patronize' list, and

"Whereas, By the issue of such an injunction or restraining order as prayed for by the above named firm, organized labor will be deprived of one of its most effective weapons, and

"Whereas, J. W. Van Cleave, the president of above named firm, also president of the National Manufacturers' Association, stated that in a few years' time he would disrupt organized labor; therefore, be it

"Resolved, That the U. M. W. of A., in Nineteenth Annual Convention assembled, place the Buck's stoves and ranges on the unfair list, and any member of the U. M. W. of A. purchasing a stove of above make be fined \$5.00, and failing to pay the same be expelled from the organization."

Mitchell testifies:

"I cannot recall anything of the introduction of or passing of the resolution. By referring to the transcript of the record I see I was in the chair when the resolution was adopted.

"Q. But you have no independent recollection in regard to it?

"A. I have not."

The official record of the convention shows that on that day two sessions were held; that when the convention was convened in the morning Mitchell was in the chair; that when it was called to order in the afternoon Mitchell was in the chair. The record shows Resolution No. 73 at length; that Delegate Ryan, Secretary of the Committee on Resolutions, reported it from that committee; that on motion of Delegate Walker the recommendation of the committee was concurred in, the vote being unanimous. Mitchell admits the correctness of the statements of this record.

Stroud testifies that he was a delegate from the Staunton Union, drew the resolution in Staunton, carried it to Indianapolis and handed it in to the Committee on Resolutions; that it was printed and a copy placed on the desks of all the members of the convention; that he was watching for it from a seat in the balcony near the stage; that he distinctly remembers that when it was offered before the convention by Ryan, that Ryan was on the platform ten or twelve feet from Mitchell, and read the resolution in a "good, clear voice"; that he followed his printed copy as the resolution was read by Ryan to see if any change had been made; that Walker moved concurrence in the recommendation of the Committee on Resolutions; that the motion was put without debate and was declared

adopted; and that it is his impression that Mitchell "gave the closest attention to all the details of the convention so far as came within his scope."

Walker, who moved the adoption of the resolution, says he believes Mitchell was in the chair; he says that he remembers making the motion; that he knows it was declared carried and that he "came away from there satisfied that it was carried all right."

Mitchell does not deny having heard the resolution; does not deny having put the resolution; does not deny having declared it carried; he says only, "I do not remember."

We accept his statement that he has forgotten; but what of that? The fact that he undertook and discharged the duties of a presiding officer alone raises a presumption that he attended to the affairs of the assembly over which he was presiding; a presumption which no mere "non me recordo" is sufficiently weighty to overcome; moreover, the testimony of the others, the nature of the subject, the identity of the plaintiff and the then position of organized labor respecting it, and the publicity then given to the situation render it indubitable that Mitchell was fully conscious of the details of the resolution and wilfully took part in its passage at the time.

On the 9th day of January, 1908, the resolution was printed in the United Mine Workers Journal, as Mitchell knew it would be, and by that organ alone disseminated amongst the 300,000 members of the Association whose chief officer and head he was.

In defense of the charges now at bar, neither apology nor extenuation is deemed fit to be embraced; no claim of unmeant contumacy is heard; persisting in contemptuous violation of the order, no defense is offered save these.

That the injunction:

"1. Infringed the constitutional guaranty of freedom of the press.

"2. Infringed the constitutional guaranty of freedom of speech."

These defenses do not fill the measure of the case; the injunction was designed to stay the general conspiracy of which the publication of the "Unfair" and "We Don't Patronize" lists were but incidents; the injunction interferes with no legitimate right of criticism or comment that law has ever sanctioned and the respondents' intimation that it does so is a mockery and a pretense.

Upon looking into them for examination there first puts forward, that while the Constitution ordains (Am. 1): "Congress shall make no law . . . abridging the freedom of speech, or of the press," yet there occur also within it certain analogies as well as in legislation all time acquiesced in, nay, demanded by the people, certain illustrations which demark the meaning of the provision.

Thus (Const. Am. II) ". . . the right of the people to keep and bear arms shall not be infringed"; yet who disputes the validity of laws throughout the land penalizing the carrying of concealed weapons? Or if one kept an array of firearms so persistently trained against his neighbor's door-yard as to terrorize all persons from coming out and going in, thus impair-

ing the utility of his dwelling, who will be found declaring that an injunction to remedy such condition of things is a "violation of constitutional rights?" The Constitution itself *confers* upon the people no right to bear arms, the right is aside from the Constitution; the Constitution does no more than inhibit Congress from in the name of the National Government infringing the right, as elsewhere defined and ascertained; leaving the right to be regulated or even prohibited by the several States, within their respective dominion, if such be agreeable to the judgment of their people.

So with respect to the inhibition against abridging the freedom of speech or of the press; the Constitution nowhere *confers* a right to speak, to print, or to publish; it guarantees only that in so far as the Federal Government is concerned its Congress shall not abridge it; and leaves the subject as the other to the regulation of the several States, where it belongs. Who can be persuaded that the penalizing of false and malicious libels upon the integrity of honorable men, or slanders upon the virtue of chaste women, is an outrage upon "the constitutional rights" of the villifier?

Do those of thoughtful and sincere reflection escape the unharmony between claims for a right of utter license in speech and press and the punishment by law of libels and the mulcting of slanders? Let us turn over this matter. Libel being punished criminally, it is because that publication was against law; therefore unlawful; therefore without right; if in civil actions slanders are mulcted by law, it is because that speech was an infraction of the rights of another, therefore a wrong by the first; no "right" to publish either the libel or the slander can be sustained, except upon the theory of a "right" to do "wrong." Let it be true that the common law had fully evolved a "Right of freedom of speech and of the press," yet in evolving this right it also identified it; identified and maintained not only the "right" of free speech but as well identified and condemned the "wrong" of it; and identified the "wrong" of it not alone in "Libels" and in "Slanders," but in some other regards; no claim to "right of free speech" has served him who by the freedom of his speech obtained money by false pretenses; nor has a "right to print whatever one will" been ever of avail to forgers and counterfeiters. Howsoever the people of the several States by their several constitutions and laws have found it best to retain, to broaden, or to restrict the common law in this field which, as above pointed, the Federal Constitution abandons to their charge, yet the common law still maintains in this district here; (for I know of, and have been pointed to, no legislation therein on the subject;) and I therefore pursue its principles a little further, in their application to the particular matter; being concerned to identify an established subject of equitable intervention rather than subjects which are confessedly outside the limits of its legitimate scope.

It is no more suspected by the observant that courts of equity enjoin the commission of mere threatened crimes, than they are suspected to hesitate in enjoining certain infractions of prop-

erty rights although happening to be conceived or involved in crime; these infractions are limited to infractions of such a particular nature as that after their perpetration the law has no remedy adequate against their results.

Finding in the common law that not all writings, not all speakings are lawful, that some are unlawful, and looking about for the particular rule which is competent to distinguish the lawful from the unlawful I deduce it from all considerations to be this: whatever in writing, print or speech violates a legal right of another, is unlawful; whether in itself alone it accommodates that result, or whether it be but one instrument in a concert tuned to that end. If such a writing, printing or speaking is unlawful, the rest is clear; it ought to be enjoined in advance, if either it alone, or the concert, so invades rights of property as that the law affords no remedy adequate to compensate for the results; nor would I yet be thought to consider that the process of injunction of right should go no further; that the inestimable advantage of a good name may not thus be rescued from preconceived despoilment; but of such questions when they come.

An elaboration of these arguments would usually be quite agreeable to my desire, yet these suggestions sound the hollowness of the defense, and to essay more might savor of an inquiry into the correctness of the injunction ordered by Mr. Justice Gould, a duty already taken up and discharged by abler hands than mine.

While the foregoing considerations put away the contention that the injunction invades the right of free speech and of the press, yet the position of the respondents involves questions vital to the preservation of social order, questions which smite the foundations of civil government, and upon which the supremacy of law over anarchy and riot verily depend. Are controversies to be determined in tribunals formally constituted by the law of the land for that purpose, or shall each who falls at odds with another, take his own furious way? Are causes pending in courts to be decided by courts for litigants; or the view of each distempered litigant imposed upon the courts?

Are decrees of courts to look for their execution to the supremacy of Law, or tumble in the wake of unsuccessful suitors who overset them and lay about the matter with their own hands, in turbulence proportioned to the frenzy of their disappointment?

Counsel are heard claiming that no one needed to obey the order, although no reason is brought save those already looked at; no discussion of the technical distinction between "void" and "erroneous" orders was undertaken although invited, wherefore my conceptions of this particular are destitute of the advantage to be had by considering the views of my brethren of the bar.

Had claim been made that the injunction was "void," it had involved a claim that the court was without either

1. Jurisdiction of the parties, or without
2. Jurisdiction to issue injunctions; for the propriety of relief by injunction was the subject-matter of the controversy.



Jurisdiction of the parties it had, for they attended before it; that it had jurisdiction to hear suits for injunctions and to determine upon their issuance no one is willing to gainsay; indeed the Sherman Act, before quoted, provides in very words (1. Sup., 703):

"The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act."

And the Code of Laws for the District of Columbia, respecting our tribunal here (Sec. 61):

"The said court shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States," and (Sec. 62)

"The Justices of said court . . . shall severally possess and exercise the jurisdiction possessed and exercised by the Judges of the circuit and district courts of the United States."

That the order was "void," according to the technical criteria by which the law determines "voidness" no one has shown me a pretense; yet under technical "voidness" alone, can parties escape the duty and the necessity of obedience; were it concededly "erroneous," in the sense that the tribunal had fallen into an error in the determination of a cause which it was invested with jurisdiction to "hear and determine," the duty and necessity of obedience remains nevertheless the same. And I place the decision of the matter at bar distinctly on the proposition, that were the order confessedly erroneous, yet it must have been obeyed. (Wor-den v. Searls, 121 U. S., 14.)

It is between the supremacy of law over the rabble or its prostration under the feet of the disordered throng.

The interpretation of the law of a matter by an appropriate judicial tribunal settles that matter between the parties; else there is not anywhere to be had a settlement which takes impartial account of both sides; even if it be said that tribunals now and then fall into error in particular matters, yet this error lies in the incomplete and finite nature of worldly things, and should not overturn the rule; for the rule being the best attainable by finite man, holds better results for the social fabric, more promotes the general welfare than would any other rule; for any other rule would be not the best rule, but somewhat worse. It is to the end that errors so falling may be minimized by possible correction, that tribunals for review are established for the advantage of a party who has such claim to make; but meanwhile the decree fixes the law's seal upon the matter, there to remain until removed, if at all, in the manner of order; not by riotous hands.

When, with the parties to this cause attending, their dispute heard, and the status of the subject of the controversy examined into, the inhibitory process of this tribunal issued forth, it was the law's command to "Stand! Hands off! until justice for this matter can be ascertained."

Is not Law wide enough, and its shield broad enough to avert from annihilation that which its tribunals have taken in hand for the very sake of decreeing whether it shall not be saved?

Yet everywhere; all over; within the court

and out; utter, rampant, insolent defiance is heralded and proclaimed; unrefined insult, coarse affront, vulgar indignity measures the litigants' conception of the tribunal's due where-in his cause still pends.

Before the injunction was granted these men announced that neither they nor the American Federation of Labor would obey it; since it issued they have refused to obey it; and through the American Federation of Labor disobedience has been successfully achieved and the law has been made to fail; not only has the law failed in its effort to arrest a widespread wrong, but the injury has grown more destructive since the injunction than it was before. There is a studied, determined, defiant conflict precipitated in the light of open day, between the decrees of a tribunal ordained by the Government of the Federal Union, and of the tribunals of another federation, grown up in the land; one or the other must succumb, for those who would unlaw the land are public enemies.

On the sociological aspect of the situation, some faith in the ultimate rightness of American men, whether in Labor Unions or out, is to be entertained; for I believe that the habit of the land saturates them with a readiness to abide by authority, as I believe that this very readiness to yield to authority has undone them before now, through the errors of misguiding leaders, swollen by pigmy power; it stands in the nature of things that the unlettered be most sensible of that authority which most often shows itself in their modest affairs, although a higher may exist to which their attention is not every moment directed by some interference with them, but to which they stand ready to adhere upon the moment that shows them that the lesser authority was in mistake, or leading them awrong. It is written in this record that the labor unions and its officers meddle into a member's daily affairs deeper than does the law; restrict him in matters that the law leaves free; and thus so continually crowd their authority upon his attention, that insensibly he comes to regard them as of first control in his affairs; the fact that he regards them as authority, leads him to heed them because of his readiness to yield to authority; his very respect for authority, assumes that all authority is respectable; and so upon them he relies, by them he is led. What knows the worker in Texas, Florida, Maine and Oregon of the merits of the original controversy of 36 metal polishers in Missouri? What knows he of the refined distinctions about "Boycott," "Conspiracy," "Injunction," and the "Voidness for Want of Jurisdiction," of Judicial Decrees? In respect of each of these and of the original controversy he has been betrayed; (App. A) hoodwinked into the stand of an enemy of law, and of social order. Announcing freedom to purchase what and where one will, they deny that right to him himself; proclaiming the right of all men to labor, they restrict it to the holders of a union "card"; declaring the right to enjoy full earning capacity, they limit his daily earnings to a stated sum.

Says the authority of law "I lead you by the truth"; says the other, "I lead you by a lie"; says one, "I stand for the obligations of con-

tracts, including yours"; the other, "I throw down contracts, even though yours"; says one, "I am for law"; the other, "I unlaw."

That the universal recognition of the desirability of associations of craftsmen for the ascertainment and advancement of the welfare of their kind is so retarded is to be much deplored; yet it is in the history of man, that some lessons must be unlearned; that systems which proceed in antagonism to rule, shatter themselves at length against the resistless barrier of public law.

It would seem not inappropriate for such a penalty as will serve to deter others from following after such outlawed examples; will serve physically to impose obedience even though late; will serve to vindicate the orderly power of judicial tribunals, and to establish over this litigation the supremacy of Law.

#### APPENDIX A.

The assurances in the original "Special Notice" and other literature about "due investigation" having been had were likely to mislead the 2,000,000 members into believing that the rules of their organization had been complied with; thus

(Extract from Gompers' report to the Convention of the American Federation of Labor, held at Chicago, in December, 1893.)

"The Executive Council has adopted a rule which it regards as fair as well as safe, and which is here quoted, so that the decision of the Federation may be a guide for the future action of our officers, regardless who they be. It is as follows:

"Resolved, That it is the sense of the Executive Council of the American Federation of Labor that contracts made by unions with their employers should be faithfully lived up to by the union, so long as it is not violated by the employer, and the occurrence of any trade dispute with such employers by their unions out of not having contracts shall not be cause for the violation of agreement by such unions as have regular contracts. The Executive Council further decides that when making contracts, unions should consult and act in harmony with all unions with interests at stake."

(Extract published at the head of the "We Don't Patronize" list in the Federationist.)

"When application is made by an International Union to the American Federation of Labor to place any business firm upon the 'We Don't Patronize' list, the International is required to make a full statement of its grievance against such company, and also what efforts have been made to adjust the same.

"The American Federation of Labor either through correspondence or by duly authorized representatives seeks an interview with such firm for the purpose of ascertaining the company's version of the matter in controversy."

In his report to the Convention of 1907, Gompers stated:

"... pursuing the usual course followed in cases of appeals of this character, I caused an investigation to be made and made further investigation myself, and had a representative of our Federation endeavor to bring about an honorable adjustment of the controversy between

the organization primarily in interest and the company it was then that my colleagues and myself, the Executive Council, approved the position and action of the organization affected, and this fact was published in the American Federationist."

In refutation of these statements, in his testimony appears:

"Q. Did you attempt to communicate in regard to this matter with Mr. Van Cleave or any representative of the Buck Stove and Range Co.?"

"A. Not directly."

Pressed by cross-examination to disclose either the truth or falsity of his published official statements the next question was:

"Q. By letter or personal communication?"

"A. No, sir; only through Mr. David Kreyling . . ."

This was the same Kreyling, Secretary of the Central Trades and Labor Union, who had taken part in the conference with Van Cleave; and Kreyling, in testifying, refutes the pretense that Gompers had so communicated with him.

Indeed Gompers was so without information about the merits of the original controversy that he made oath in testifying:

"I know, as well as I know anything, which I have not seen, that no such arrangement existed between the Metal Polishers' Union and the Buck Stove and Range Company, or the Stove Founders National Defense Association."

#### APPENDIX B.

Van C.: Well, gentlemen, what can I do for you?

Kreyling: I am representing the Central Trades and Labor Union, and I have come here to see if we can bring about an adjustment of this matter. We have been asked to endorse the action of the Metal Polishers, and before doing so we make such visits and very often we have been able to adjust them and avoid all further trouble. Now that is simply why I am here.

Van C.: I think that is eminently proper.

Krey.: To get your side of the story.

Van C.: The most amusing part of this whole matter to us is the false attitude in which the Metal Polishers have put themselves. The statements that they have sent out asking the co-operation of affiliated Unions are almost wholly false. As I shall undertake to show you. I take it for granted that this is about the way this matter has been put before you and other Labor Unions throughout the country, because we have received a number of these letters, which read as follows:

"I desire to inform you that this firm (meaning The Buck's Stove & Range Company) is unfair to Organized Labor. The Metal Polishers, Buffers and Platers were compelled to go on strike on account of the unfair treatment at the hands of this firm. The members of the above Union had been working nine hours per day for the past 18 months and the firm tried to force them to work ten hours per day."

That is utterly and absolutely false. There is not one iota of fact in that statement.

(Above letter continued.)

"I would be pleased to have you return the

goods shipped to your firm, also notify Mr. Van Cleave, the manager of The Buck's Stove & Range Company, that your firm will refrain from making any further purchases from them until they treat their employees as they should be treated, or as other manufacturers do."

Now you see there is a complication that is so wholly false that it is strange to me that men put themselves on record in that way. I give you gentlemen the credit of being absolutely sincere in coming here and that you want the real facts from our side.

Krey.: That is what we are here for as representatives of the Central Trades and Labor Union and Metal Polishers.

Van C.: Here is a funny thing, a letter coming to us from a Local of the American Federation of Labor in October notifying us that our goods had been put on the "unpatronizing" list and then setting forth these statements which have been made as the foundation for it. The American Federation of Labor I do not suppose has acted upon this matter yet.

Lucas: I think it has.

Van C.: Has it? Now then the real facts in this case are these: The latter part of last year, through the action of our foreman, whom we had in our polishing department, we discovered along some time in November that our Polishers were quitting work at five o'clock, when the balance of our plant was running ten hours. I immediately made inquiry and found out that some little time they had been doing this, contrary to our rules.

About the close of last year I called all the polishers into my assembly room and told them what they had done, that they had tried to steal a nine-hour day and that we would not stand for it, because a majority of the stove foundries in this district (the western district) were running ten hours, that the balance of our foundry, and all of our machinery were running 10 hours. And I said to them, there is another thing that we won't stand for, and that is the limitation of your earnings. We regard the man that will rob his own wife and children of his earning power the biggest fool on the face of the earth, and we do not want it, and I gave them to understand that when we started up in January, after our repairs and the holidays, that our shop would run 10 hours, and you will work 10 hours, and if you don't want to do that don't come back, thus giving them about three weeks' notice. Well, they had a meeting in their Union and chewed the rag for awhile and they decided that they were all coming back, under protest. I did not get any notice of this, however, from the Union, and I do not think the men knew this. They went to work and seemingly worked very contentedly from January to the 27th of August, 1906. Our men earned more money than they ever earned before in our shop. The majority of the men who went out of our shop were earning from \$4.00 to \$5.25 per day. Our shop conditions are as good as we know how to make them, and the men will all say that we have the best shop conditions in the city of St. Louis.

Then along the early part of August Mr. Grout, the president of your organization, wrote to No. 13 and told them to pass a resolution and

instruct the men working in our shop that they should quit promptly at nine hours. He did that, but I had no notice of it. The men were doing well, and they were well treated, and they thought the whole matter had been ended, and furthermore, in addition to that there are statements being made by Leberman in sending out his notices to affiliated unions that we are requiring our men to work ten hours for nine hours' pay. Now that is not true, because the men are all piece workers and they get all that they earn, and they get fairly good wages, \$4.00 to \$5.25 per day.

Lucas: Yes, that is good wages.

Van C.: Now, gentlemen, my position relative to wages has been that under no circumstances would I stand a moment for an unfair price. Then I ask that our men be fair to me and that they earn all they can. The idea of limiting a man's earnings is perfectly ridiculous, because God never made two men alike. Some men earn \$3.00, some \$4.00 and some \$5.00; that would not signify that the \$3.00 price was unfair, but simply incompetency. This man Leberman is sending out misleading statements to affiliated unions and I am very glad indeed to have you gentlemen come here because I want to show you.

We are members, as you know, of the Stove Founders Defence Ass'n. This matter of a nine-hour day was taken up on the 27th, 28th and 29th of June, 1906, between the conferees of the National Metal Polishers' Union and the conferees of the Stove Founders' Defense Ass'n. They spent three days on this subject, in Chicago. The result of it was that after a good deal of hallowing and bellowing, they could not agree and the matter was laid over.

Now then, the reports of the Executive Committee of the Defense Ass'n show that out of the membership of the Defense Ass'n, that 41 members are running 10 hours a day, 10 members 9 hours, 2 members 9½ hours, 1 member 56 hours per week, 4 members non-union, 3 open shops, and 4 under contract work. It was also shown that every member of the Defense Ass'n in this district was a ten-hour shop, all of our competitors around here.

Kreyling: Why the Belleville stove works are running nine hours, and they are members of the Defense Ass'n.

Van C.: Are they? I didn't know that. When you view this matter from the standpoint of the conferees agreement between the two national bodies, one of which we are members, it does seem strange to me that Mr. Grout and his executive committee would order Local No. 13 to arbitrarily call a strike on us here when the real object that he should have had in view was to have a conference with the Defense Ass'n, whereby all shops under the jurisdiction of the Defense Ass'n should be on a nine hour basis. Again, we cannot run our shop ten hours a day, machinery ten hours a day, and have 15 or 20 polishers quit their work, and leave the machinery running, at nine hours. So that the proposition becomes an unfair one, as we look at it, and not based upon good judgment or good faith.

Take the Iron Moulders' Union many years ago. The conference agreements that they have

with the Defense Association were all brought about by compromises on both sides until a good level was made. That is the way that Mr. Grout and the Metal Polishers can get an agreement as to the nine-hour day. The result of it is now, that he has taken this action. he has authorized the local here to put on a local boycott. Leberman has taken it into his hands and sent out to every affiliated union requesting their support, as I understand it, without Mr. Grout's recommendation as to a national boycott. Now, then, that puts the Defense Association in the position of fighting this thing to a finish, which they have agreed to do. Now, then, of course, if you people have affiliated unions endorse such unfair propositions as that, why of course it is coming to a show down, and public opinion is rapidly changing on these matters.

I believe, and recognize the right for every man to quit work whenever he pleases, for any cause, or for no cause on earth. We are free men, free country, but when he quits work and then forms himself into a self-appointed committee and undertakes to picket a foundry, he is then a criminal. You took offense at what Mr. Post said. That is just what he meant.

Kreyling: If they would only explain it that way in public, but when they make the statement so broad as to include everybody that has any connection with the labor organizations, we cannot stand it.

Van C.: You simply want me to set forth these facts, and as I say, it brings the matter to a point of the Defense Ass'n defending this matter, not The Bucks' Stove & Range Company, because it is in violation of the spirit of the conference agreements. If you demand something of the Defense Ass'n and they cannot agree upon it, experience has taught us that if you keep at it, in the course of time justice is reached, but these men now propose to force this action, and in order to do it, they have asked you, as affiliated unions, to endorse the boycott. If you endorse this boycott, then in my opinion you come squarely in line with what Mr. Post charged you. That is the sense in which Mr. Post referred to this time.

Now when a labor union in Ohio, or in Texas, or in Oklahoma, endorses this proposition upon the statement of Leberman, which is false and can be proved so, why they get into pretty harsh lines before they get through. Now that is really my side of the question, except this, when these men went out of our shop and when they left us, they had my sympathy, but there were two or three agitators in the shop, and when they undertook to picket our plant, by this action of theirs they cut loose from me all the sympathy that I ever had for them, and we have succeeded in filling our shop, and do you know we are turning out more nickel than we ever turned out with these people here, I can prove it to you, and paying them the same prices.

Becker: If I am not misinformed, the members of the various Polishers Unions throughout the country only work nine hours per day.

Van C.: That may be true, but we are members of the Stove Founders Defense Ass'n.

Becker: The Belleville Stove Works are only working nine hours.

Van C.: Is that so? Well, it is a very unfair proposition for the Belleville Stove Works to do this, if it is true, and in all probability they were forced to do so, but when they tried to do it here they ran up against a different man.

Becker: Yes, they were. If the polishers were all piece workers, I do not see how nine hours would make any difference.

Van C.: It would. There is another fact, that notwithstanding that our shop was running 10 hours, the men were not doing nine hours work.

Lucas: That nine-hour statement came around like this, unless we are misinformed, the men were informed that whenever they got the amount of \$4.00 earned to go home, regardless whether it was nine hours or ten hours, that is what Little said, and he said that it was with your knowledge and instructions.

Van C.: If Little said that, I want to denounce him here as being a liar and traitor to his company, and that it was contrary to our instructions. There is not one single word of truth in that statement. Now, then, this young man (pointing to Lee Van Cleave) was present at every meeting (which are held daily and at which Little was present) and can verify the statement that this is contrary to our rules, and if Little said that we authorized the men to do that, he was a traitor to us and he is a liar when he makes that statement.

Lucas: Well, he said that you were satisfied if the men turned out \$4.00 worth of work for them to go home.

Van C.: I would no more sanction a man's limiting his earnings than I would to fly and I have said to every man, and I say to you, that a man is a consummate fool that will rob his wife and children of his earning power. I allowed Mr. Little to piece our work. I said to Little, now I do not want a cheap price, because I want good work, and I want a fair price put upon this work.

Kreyling: I believe that you have been misinformed when you have been informed that Mr. Grout was the one that ordered this strike. No doubt this matter came about like this, that when the local organization drew up these demands and decided for themselves, after they had acted on the matter they asked for the endorsement or approval of the International Executive Board, that was granted.

Van C.: Didn't Grout send a letter to Local No. 13 as per the statement that I have made?

Lucas: Yes, similar to that.

Kreyling: The Metal Polishers No. 13 Local have demanded from The Buck's Stove & Range Company to grant the nine-hour day.

Lucas: Didn't Mr. Grout come up here and visit you several times in reference to that?

Van C.: Yes, quite a while back.

Lucas: We understood that Mr. Grout had been up here to visit you, and the nature of the visit was to try and bring about an understanding as to the nine-hour day. He could not come to a settlement, and he reported back to the local.

Van C.: He took it up with the Defense Association.

Kreyling: If I understand it right, it is merely a question of asking the Buck's Stove & Range Company to grant the metal polishers the nine-hour day. Now, as yet you have gotten away from the question with all these other matters in, I have not heard Mr. Van Cleave give any reason why the Buck's Stove & Range Company refuses to grant the nine-hour day, only that you claim the other part of the foundry are working 10 hours.

Van C.: All of our competitors in St. Louis are working ten hours, and the majority of our competitors in this district are working ten hours, and besides the Defense Ass'n is the one to adjust this matter.

Kreyling: The action of the Defense Ass'n leaves it open for the metal polishers to come to any final conclusion on the matter they wish. Now we certainly will grant the right to any local organization to try and shorten their hours if there is any possible chance to do so.

Van C.: I have no objections to any shorter hours.

Kreyling: In the beginning of your conversation you admitted that the polishers had worked nine hours for 18 months.

Van C.: No, I said that was false. They did not work three months.

Kreyling: They worked nine hours for quite a while.

Van C.: Only a short time.

Lee Van C.: If they quit when they got through working it was not a nine-hour day.

Kreyling: If they continued that for some time, why it was.

Van C.: There is no use to talk to me that way.

Kreyling: I just want to find out whether or not it would make any difference to you in running your foundry for 25 of the men to work nine hours or ten hours?

Van Cleave: It makes a very material difference.

Kreyling: The point that I am trying to show you is this, there is certainly not much difference to you if these men were working nine hours a day and the other part of your foundry working ten hours.

Van C.: I want to be fair, but it is not fair for you to undertake to argue that we can run all of our foundry 10 hours a day and allow 25 polishers to work nine hours. It is not fair for you to undertake to say that we ever sanctioned the nine-hour day, because Little permitted these men the latter part of 1905 to leave the shop at all hours between 4:30 and 6:00 o'clock.

Lucas: He was a representative of the firm, as foreman, and it was looked upon that you were satisfied for the men to go home whenever they got through with their day's work.

Van C.: Now, then, I never agreed to that, and I have got evidence to prove that he was lying. It is absolutely false.

Kreyling: Do you realize, Mr. Van Cleave, that the request of the metal polishers at this time, and has been since the beginning of this controversy, is the nine-hour day? The point is this: The Buck's Stove & Range Company are not willing to grant the nine-hour work day until the Defense Association grant it.

Van C.: If the Defense Ass'n agree to the nine-hour day to-morrow, I would put our entire shop on a nine-hour basis at once.

Kreyling: You admit that there are none of the members of the Defense Ass'n working nine hours a day?

Van C.: I have just read the number of concerns working 10 hours and also working nine hours.

Kreyling: Now the Defense Association certainly gives the privilege to all of its members to do as they like in that matter.

Van C.: We cannot do it. Now the metal polishers will probably get the nine-hour day sooner or later, but I cannot turn this shop into a nine-hour shop to-day under the present situation, and it is not fair to ask me to do so.

Kreyling: This is a matter that is based on the shortening of hours from ten to nine hours. Of course, if you have made up your mind that you cannot see your way clear to grant this, it would be useless to take up any more of your time, and especially when you are not willing to listen to an argument. Any argument that we make you call it a fallacy.

Van C.: If a foreman goes beyond his instructions and violates his instructions and does it in secret without the knowledge of the company, it is like any other man that is untrue to his firm.

Kreyling: The firm will be held responsible as long as he is in that position. As I say, it would be useless to take up any more of your time if you have made up your mind that there is no way to grant the nine-hour day.

Van C.: I will grant the nine-hour day when the Defense Ass'n agrees to it, and will make the entire shop a nine-hour day shop when they have reached this decision, and I think that is as much as you should ask of me. I am not unfair to labor at all. There is not a man in this country that appreciates his workmen more than I do.

Kreyling: There are lots of firms in this town that have granted the nine-hour day, some of them have done so without being asked to do so by the organization.

Van C.: That does not mean that the 10-hour day is unfair and that the nine-hour day, or that the eight-hour day is the only fair man in the lot. I think if you people will broaden out a little you will see that you are the ones that are unfair, not us.

Kreyling: We are responsible for our actions, if not as an organization, as an individual, and I am willing to stand for my action at any time. We will take it for granted that you absolutely refuse to grant the nine-hour day at this time?

Van C.: I will grant the nine-hour day when the Defense Ass'n does so. At such time that the Defense Ass'n agrees to the nine-hour day, we will put our entire shop on the nine-hour basis. When it comes to a point that we agree with any department to run nine hours, then we will put our entire foundry on that basis. Now this is a fair proposition to me, and I cannot in honor grant it as long as I am a member of the Defense Ass'n under present conditions. When the Defense Ass'n agrees with

the metal polishers to a nine-hour day, we will put our entire shop on nine hours. That is my position.

Kreyling: Of course the metal polishers are not responsible for the fact that the other unions are not asking the nine-hour day. We should not ask them to wait until somebody else made up their minds. We are justified in going out any time and get it if possible.

Van C.: You have the right to ask it and get it if possible, but I do not think it right to single out one institution and strike this institution. Why don't you declare them unfair.

Kreyling: It is not the fault of the metal polishers that this case is brought against the Buck's Stove & Range Company. Your foreman tolerated the reduction of hours in your polishing department and let it go on for some time.

Van C.: If the foreman does things contrary to my instructions and without my knowledge, and it runs on for a short while, why we cannot be held responsible and it does not establish a fact by any means. I am perfectly willing to abide by any agreement that the Defense Ass'n may enter into with the metal polishers, and it would not make a particle of difference to me if they entered into it to-morrow, but until they do, I am not in a position to grant the nine-hour day. When I heard that you were coming in here, I had hoped that I would come in contact with fair men, but your proposition is anything but fair.

Kreyling: If you had an idea before I came in here that I would be fair to you and unfair to the people that I represent, you were badly mistaken.

Van C.: Well, it appears that I was.

Kreyling: Am I to understand, Mr. Van Cleave, that you are willing to arbitrate this proposition?

Van C.: The Defense Association will take it up, I cannot take it up. This matter was discussed in June with the conferees of the two national organizations. They did not agree. Now, then, certain action was taken and then the Defense Ass'n stepped in.

Becker: Those members of the Defense Ass'n who are working nine hours a day, are they not unfair to their Association?

Van C.: There is another point. I will show it to you. If this matter had never gone to the Defense Ass'n, or if I had granted the nine-hour day last year, or the year before, without discussing the matter or taking it up with the Defense Ass'n, then I might have done so, but having once given it to the Defense Ass'n, then it is out of my hands. I could not to-day do what you ask me to do without stultifying myself with the Defense Ass'n. If Mr. Grout wants it done, he can get a conference with the Defense Ass'n. If you people undertake to run a boycott and injure our business here, why there is absolutely no fairness in your proposition.

Becker: This matter would certainly adjust itself provided you were willing to grant the nine-hour day.

Van C.: I am willing to grant the nine-hour day provided the Defense Ass'n agrees to it. You cannot force this company to run nine hours. This company will run ten hours as long

as its competitors in the district do so. Those who are members of the Defense Ass'n.

Lucas: Regarding what you say, now suppose that we were starting in the stove manufacturing business and would not be a member of your Ass'n, we would be competitors of yours. Now do you think that you would do anything to help us along, or would you do everything you could to put us out of business?

Van C.: My friend, the relation that exists between myself and the other stove companies is equivalent to though we were interlaced stockholders. We do not try to put them out of business. Now the metal polishers say that we are requiring our men to work ten hours for nine hours' pay. That is not true.

Lucas: I think there is some mistake about that, because you do not ask that, and I for one would not tolerate anything like that.

Van C.: I am in receipt of a letter this morning, which says (this letter is from a salesman): "The unions have received a general letter from the National Ass'n, which outlines the difficulty we have had in our nickeling department, in which they state that we have forced our men in said department to work ten hours for the pay of nine, which is contrary to an agreement into which we had entered, so they say." The truth of the matter is no sort of an agreement as to nine hours was ever made with them, and we did not agree on nine hours. With a little bit of justice to Little (and you know that I have no patience with Little) it may be possible that he permitted the men to do this, by saying, now, boys, you can figure up your day's work just as well as I can. Now, take out \$4.00 a day and when you get through with it, so far as I am concerned you can go home.

Lucas: He claimed he did it with your consent.

Van C.: That is not true, for he did not do so with my consent.

Lee Van C.: I do not believe that Little made that statement.

Van C.: Did Little make it to you?

Lucas: No, not to me. But they claim that he said he did so with your authority.

Van C.: Why do you people refer to that when we emphatically deny the fact?

Lucas: You admit that the men had been going home before the expiration of ten hours?

Van C.: When I discovered it, I checked it then and there. The main objection that we got to it is founded on two things. One is that it is not the rule in this section of the country among stove manufacturers. Another is, we are members of the Defense Ass'n. This matter has been put up to them and it is out of our hands. If Grout had handled this with the Defense Ass'n he would have certainly have gotten the nine-hour day.

Lee Van C.: Granting the nine-hour day does not make us fair or unfair.

Kreyling: Granting the nine-hour day to the metal polishers at this time would put you in a fair light with that organization.

Van C.: Now, then, I think that the metal polishers are unfair inasmuch as they are in a signed agreement with the Defense Ass'n, and all of these matters can be adjusted by con-



ferences. The proper way for them to do is to ask for another conference and discuss the thing again. When they have once agreed to it there will never be another reference to it. I do not think it will be two years before all the stove shops will be on a nine-hour basis.

Becker: You must never forget the fact that your Ass'n and your class of people are not buying your stoves. They have steam heat, and the working men are using the stoves.

Van C.: Now, there is no use for you to talk like that to me. Gentlemen, you can do as you please about it.

THE REPORT of the decision of the Court of Appeals in *Garfield v. U. S. ex rel. Stevens* will be found at page 757 of the present volume of THE WASHINGTON LAW REPORTER. The syllabus, which was omitted from the report owing to the length of the opinion, is as follows:

**APPEALS; MANDAMUS; APPEAL BY SECRETARY OF INTERIOR WITHOUT BOND; ATTORNEYS; DISBARMENT; DUE PROCESS OF LAW.**

1. Under secs. 1000 and 1001 R. S., the Secretary of the Interior may, under the direction of his own Department and of the Department of Justice, appeal to this court from a judgment of the Supreme Court of this District awarding a writ of mandamus to compel him to reinstate an attorney disbarred from practice before the Department for alleged unprofessional conduct, without giving the bond required to act as a supersedeas in ordinary cases.
2. There is no such inconsistency between sec. 1282, Code D. C., requiring that in case of appeal by defendant in mandamus proceedings the court shall fix the penalty of the appeal bond necessary to stay execution of the judgment, and secs. 1000 and 1001 R. S., as that the latter are repealed, so far as this District is concerned, by the former.
3. Whether the justices of the Court of Appeals have power to act as a court when apart from each other and outside the District of Columbia, not determined, such determination not being necessary to the decision in this case.
4. The Commissioner of Pensions has the right to conduct an ex parte examination regarding the practices of attorneys before his office, and to use facts so ascertained as the basis of formal proceedings for disbarment; but upon the charges so made, if not admitted, he is not authorized to prosecute to judgment save upon evidence submitted in the usual way, with opportunity to the accused to hear and examine the witnesses and to produce proofs in his own behalf.
5. On appeal by the Secretary of the Interior from a judgment granting a writ of mandamus to compel reinstatement of disbarred attorneys, it appeared that charges of illegal and unprofessional conduct were preferred against relators, to the effect that by misleading clients as to the value of land warrants they were employed to recover for them they had bought them at a low price and sold them at a large profit; that they had filed fee agreements with no intention to observe the same, etc. The relators answered the charges denying that they had misled clients, but admitting purchase of the warrants as charged, and setting up the claim that such purchase was common among land attorneys and was known to and acquiesced in by the officials of the Interior Department. An order of disbarment was made, and relators petitioned for a writ of mandamus to compel reinstatement, alleging that due process of law had not been observed in that the Secretary had caused an ex parte investigation to be made into the claim that the purchase of land warrants by attorneys from clients was known to and acquiesced in by Department officials, and also that in reaching a decision he had considered depositions taken by the Commissioner of Pensions in the investigation had before charges were preferred. The answer of the Secretary alleged that his decision had been based upon the substantial admissions made in the relators' answer to the charges against them; that the alleged knowledge of such practices on the part of

officials in his Department was held by him to constitute no defense to the charges, and the investigation made was merely to inform himself as to the conduct of such officials; and he denied considering the depositions taken by the Commissioner of Pensions. The answer was demurred to. *Held*, that the Secretary had jurisdiction to determine the weight to be given these admissions, and the soundness of his conclusion thereon can not be inquired into in mandamus proceedings; and the judgment granting the writ reversed.

No 1941. Decided November 6, 1908.

APPEAL by the Secretary of the Interior from a judgment of the Supreme Court of the District of Columbia, at Law, No. 50,621, granting a writ of mandamus to compel reinstatement of relators as attorneys before the Interior Department. Reversed.

Mr. D. W. BAKER, Mr. STUART McNAMARA and Mr. F. W. CLEMENT for the appellant.

Mr. HENRY E. DAVIS, Mr. R. P. BARNARD, Mr. GUY H. JOHNSON and Mr. W. T. S. CURTIS for the appellees.

**Bills and Notes.**—An officer of a corporation who has undertaken to indemnify a bank for any debts of the corporation thereafter contracted, to a certain amount, and who has paid, after maturity, a balance due upon certain accommodation notes assigned by the corporation to the bank, is held, in *Rockefeller v. Ringle* (Kan.), 94 Pac., 810, 15 L. R. A. (N. S.), 737, not to be entitled to recover of the maker thereon either as a purchaser for value in the course of business, or as having become subrogated to the rights of the bank.

**Fixtures.**—Building material belonging to the owners of an unfinished building, and left therein for the purpose of completing it, is held, in *Rahm v. Domayer* (Iowa), 114 N. W., 546, 15 L. R. A. (N. S.), 727, to pass with the deed of the realty, although not annexed thereto.

**Guaranty.**—An implied guaranty of advances is held, in *Miami County Nat. Bank v. Goldberg* (Wis.), 113 N. W., 391, 15 L. R. A. (N. S.), 1115, to be effected by a letter requesting a bank to let another make overdrafts, and accommodate both "him and me."

**Interurban Railways.**—Whether failure to look and listen before attempting to cross an interurban street-car track laid along the public highway is negligence, is held, in *Chicago & J. Electric R. Co. v. Wanic*, (230 Ill., 530, 82 N. E., 821, 15 L. R. A. (N. S.), 1167, to be a question for the jury.

**Lease.**—A provision in a lease that, if the lessor can not deliver possession as contemplated, delay in delivery of possession will not work an abridgment of the term, but shall operate to defer the date of its commencement, was held, in *Johnston v. Corson Gold Min. Co.* (C. C. A.), 157 Fed., 145, 15 L. R. A. (N. S.), 1078, not to change the character of the conveyance from an executed to an executory contract.

A rule of this office for publishing notices to absent defendants in divorce proceedings requires payment in advance.

Notice of cost will be sent solicitor on receipt of order from the Clerk of the Supreme Court, District of Columbia.

#### RULE OF COURT.

**RULE 17. SEC. 3.** Hereafter all notices which relate to proceedings in the Supreme Court of the District of Columbia, the publication of which is required by law or by Rules of Court or by any order of court, shall be published in THE WASHINGTON LAW REPORTER, during the time required by law, in addition to any other papers which may be specially ordered or which may be selected by the parties.

#### Legal Notices.

##### FIRST INSERTION.

John A. Kratz, Jr., Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Laura Anna Williams, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 23d day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 23d day of December, 1908. CHARLES LEE COOKE, 1408 Fifteenth st. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,688. Administration. [Seal.] 52-3t

A. Leftwich Sinclair, Attorney  
[Filed December 3, 1908.]

In the Supreme Court of the District of Columbia, Holding a Special Term as a District Court of the United States for the District of Columbia.

In the Matter of the Payment of Damages Resulting to Adjacent Property from Changes in the Grades of Streets, Avenues and Alleys Authorized by the Act of Congress Approved February 28, 1903, Relating to the Construction of a Union Railroad Station in the District of Columbia.  
District Court, No. 671.

Notice is hereby given that we, the undersigned, having been designated and appointed by the Supreme Court of the District of Columbia, holding a special term as a United States District Court for the District of Columbia, as a commission to appraise and determine the damages resulting to adjacent property from changes in the grades of streets, avenues and alleys authorized by the act of Congress approved February 28, 1903, relating to the construction of a Union railroad station, in the District of Columbia, will meet at 10.30 o'clock A. M., on the 18th day of January, A. D. 1909, at the United States Court House (City Hall), in the District of Columbia, in a room to be assigned us by the United States marshal, for the purpose of viewing the real property affected by the changes of the grades of the following named streets, in said District, and hearing testimony touching the damages resulting to said property from said changes of grade. In accordance with the terms and provisions of an act of Congress approved April 22, 1904, entitled "An act to provide for payment of damages on account of changes of grade due to construction of the Union Station, District of Columbia," as amended by an act of Congress approved June 29, 1906, entitled "An act amendatory of an act entitled 'An act to provide for payment of damages on account of changes of grade due to construction of the Union Station, District of Columbia,' approved April twenty-second, nineteen hundred and four," to wit: First street, between Massachusetts avenue and D street northeast; Massachusetts avenue, between First and Second streets northeast; E street, between First and Second streets northeast; F street, between Second and Third streets northeast, and Second street, from E to G street northeast. All owners of real property damaged by the changes made in the grade of any of said streets, will file a petition with us, in this cause, signed and sworn to, for an allowance of damages within sixty (60) days after the said 18th day of January, A. D. 1909. The aforesaid act of Congress approved April 22, 1904, provides that upon the failure of any such owner to thus present his claim for damages, within said period, his right to do so shall cease and determine. CHAS. A. BAKER, GEORGE W. MOSS, GEORGE SPRANBY, Commission to

[Seal] Appraise Damages. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. dec 25-Jan 1-8-15

#### Legal Notices.

Frank S. Bright, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscribers, of the District of Columbia, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elizabeth Freund, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof, legally authenticated, to the subscribers, on or before the 23d day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 23d day of December, 1908. JOHN LOUIS FREUND, 1847 8th st. N. W.; WM. J. FREUND, 815 10th st. N. W., Wash., D. C. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,688. Administration. [Seal.] 52-3t

Henry M. Baker, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Ellen B. Linscott, Deceased.  
No. 15,604. Administration Docket.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Henry M. Baker, it is ordered, this 18th day of December, A. D. 1908, that all concerned appear in said court on Tuesday, the 26th day of January, A. D. 1909, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and Washington Post once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty [Seal] days before said return day. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-3t

Jos. A. Burkart, Attorney  
In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of Melende H. Smith, Deceased.  
No. 14,836. Administration Docket 87.

The notification as to the trial of the issues in this case relating to the validity of the paper writing dated the 14th day of November, 1905, purporting to be the last will and testament of Melende H. Smith, deceased, having been returned as to Reed Riley, Ida McKenny, Philander C. Riley, Benjamin Riley, Matilda Riley, Ellen S. Page (married name unknown), Mittle Wade, Frederick Stansbury, Philander C. Stansbury, Robinson Riley, all non-residents, "not to be found," it is this 18th day of December, 1908, ordered that the issues be set down for trial on the 8th day of February, 1909, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald.

#### ISSUES.

(1) Was the said Melende H. Smith, at the time of the execution by her of the paper writing purporting to be her last will and testament, of sound mind and memory? and capable of executing a valid deed, will, or contract,

(2) Was the said paper writing, purporting to be the last will and testament of Melende H. Smith, executed by her, or its execution procured through the fraud, circumvention, undue influence, or coercion brought against or upon her, the said Melende H.

[Seal] Smith, by Edward E. Morse or any other person or persons? THOS. H. ANDERSON, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 52-4t

#### SECOND INSERTION.

Geo. R. Linkins, Attorney  
Supreme Court of the District of Columbia,  
Holding Probate Court.

This is to Give Notice That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Margaret A. Ricketts, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 14th day of December, 1908. GEORGE R. LINKINS, 800 19th st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,659. Admn. [Seal.] 51-3t

**Legal Notices.**

J. J. Darlington, Attorney

In the Supreme Court of the District of Columbia,  
Special Term for Probate Business.  
In the Matter of the Estate of Cynthia A. Ten Eyck,  
Deceased.

No. 15,655. Administration Docket.

## ORDER OF PUBLICATION.

Application having been made herein for probate of the last will and testament of said deceased, and for letters testamentary on said estate, by Jerome B. Ten Eyck, it is ordered this 17th day of December, A. D. 1908, that Jessie C. Miller and Anna L. Boker, and all others concerned, appear in said court on the 25th day of January, A. D. 1909, at 10 o'clock A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each of three successive weeks before the return day herein mentioned, the first publication to be not less than thirty

[Seal] days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

B. H. Warner, Jr., and J. Dawson Williams, Solicitors  
for Petitioners

In the Supreme Court of the District of Columbia.  
Jesse B. Rank and George W. Montgomery, Plaintiffs, v. Robert McDermott, Mary Ames Hart, Jeannie Ames McDermott, Elizabeth Conner, and Edith Majia, their Unknown Heirs, Alienees, and Devisees, if any or all be dead, Defendants.  
Equity, No. 27,550.

The object of this suit is to obtain a decree perfecting and establishing of record, in fee simple, by adverse possession the title of the complainant Jesse B. Rank to sublots 84, and 66 to 83, both inclusive, and the east 6.25 feet of subplot 65 in original lot 1 of Jesse B. Rank's subdivision of square 1065, and of the complainant George W. Montgomery of sublots 35 to 41, both inclusive, and the east 6.25 feet of subplot 42 in said original lot 1 in said Jesse B. Rank's subdivision of square 1065, all in the city of Washington, District of Columbia. On motion of the complainants it is by the court this 17th day of December, 1908, ordered that the above named defendants, cause their appearance to be entered herein on or before the first rule day occurring after the expiration of four weeks, exclusive of Sundays and legal holidays, after the day of the first publication of this order; otherwise the cause shall be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington Law Reporter and The Evening

[Seal] Star newspaper before said day. JOBBAL-NARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 51-St

L. Cabell Williamson, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

Estate of James Westerfield, Deceased.

No. 14,727. Administration Docket.

The notification as to the trial of the issues in this case relating to the validity of the paper writing, dated the 25th day of September, 1903, purporting to be the last will and testament of James Westerfield, deceased, having been returned as to George Westerfield, David Westerfield, Thomas Westerfield, Walton Westerfield, Yancy Westerfield, Adella Moore, Maud Walk, William Westerfield, Ida Meyer, Samuel Askins, Molten Askins, Inez Sigress, Samuel B. Reeves, Iola Askins, Almata Askins, Naomi Askins, Bessie Askins, Pearl Askins Tadlock, Monice Askins, Claud Westerfield, George Westerfield, Ethel Tindell, Talmadge Westerfield, Letha Westerfield, James Red, William Jordan, Daisy Ward, Samuel Muir, Oscar Reeves, Edward Reeves, John Reeves, Oliver Reeves, and Violet Osborn, "not to be found," it is, this 16th day of December, 1908, ordered that the issues be set down for trial on the 25th day of January, 1909, and that this order and a copy of said issues shall be published once a week for four weeks in The Washington Law Reporter and twice a week for the same period in The Washington Herald. The substance of said issues is whether said paper writing was legally executed; whether the testator was of sound and disposing mind; whether undue influence was used; whether fraud, misrepresentation or artifice

[Seal] was used, or whether it was a forgery. WRIGHT, Justice. Attest: James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court. 51-St

**Legal Notices.**

R. B. Behrend, Attorney

[Filed Dec. 4, 1908. J. R. Young, Clerk.]

In the Supreme Court of the District of Columbia.  
Margaret Cleary, Complainant, v. Catherine A. Shillman et al., Defendants.  
In Equity, No. 27,864.

## ORDER OF RATIFICATION NISI.

William H. Sholes, Wilton J. Lambert, and Rudolph B. Behrend, trustees, having reported that they have made sale of lots 24 and 25, in square 76, in the city of Washington, in the District of Columbia, to Meyer Nordlinger for \$3,850, it is, by the court, this 4th day of December, A. D. 1908, ordered that the said sale be ratified, unless cause to the contrary be shown on or before the 6th day of January, A. D. 1909. Provided a copy of this order be published in The Washington Law Reporter once a week for three successive weeks prior

[Seal] to the said last mentioned date. WRIGHT, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 51-St

H. W. Wheatley, Attorney

In the Supreme Court of the District of Columbia,  
Holding a Probate Court.

In re the Estate of John M. Oxley.

Adm., No. 15,680.

## ORDER OF PUBLICATION.

Application having been made herein for letters of administration on the said estate, by Maurice M. Oxley, it is, by the court, this 15th day of December, 1908, ordered that Alfred S. Oxley and Charley Miller, and all others concerned, appear in this court on the 20th day of January, A. D. 1909, at 10 o'clock A. M., and show cause why such application should not be granted. Provided that notice hereof be published in The Washington Law Reporter and The Evening Star, Washington, D. C., once in each of three successive weeks before the return day herein mentioned, the first

[Seal] publication to be not less than thirty days before said return day. WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

G. C. Gertman, Attorney

In the Supreme Court of the District of Columbia,  
Holding Probate Court.

In re Estate of John C. Witel, Deceased.

Administration No. 15,685.

Application having been made herein for probate and record of the last will and testament of said deceased, and for letters testamentary on said estate, by Rose M. Witel, it is ordered this 14th day of December, A. D. 1908, that Frank Blair Witel, and all others concerned, appear in said court on the 23d day of January, A. D. 1909, at 10 o'clock, A. M., to show cause why such application should not be granted. Let notice hereof be published in The Washington Law Reporter and The Evening Star once in each week for three successive weeks before the return day herein mentioned, the first publication to be not less than thirty days before said return day. WRIGHT, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

[Seal] tioned, the first publication to be not less than thirty days before said return day. WRIGHT, Associate Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

C. H. Syme, Attorney

In the Supreme Court of the District of Columbia,  
In Probate.

In re Estate of Richard Emmons, Deceased.

Administration No. 14,851.

Clara L. P. Emmons, executrix herein, having reported to this court the sale at public auction of part of lot eighteen in square 974, Washington, D. C., described as follows: Beginning at the northeast corner of said lot and running thence west on G street sixteen and 13-100 feet; thence south parallel with 11th street ninety feet; thence east parallel with G street sixteen and 13-100 feet, and thence north ninety feet to the place of beginning, to George T. Shepherd, who has since assigned his right of purchase to Joseph E. Falk, at and for the sum of thirty hundred and fifty dollars cash, it is by the court this 16th day of December, 1908, adjudged, ordered, and decreed that said sale be, and the same is hereby ratified and confirmed, unless cause to the contrary be shown on or before the 25th day of January, 1909. Provided a copy of this order be published once a week for three successive weeks before that day in The Washington Law Reporter and The Evening Star newspaper. By the Court: WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

[Seal] paper. By the Court: WRIGHT, Justice. A true copy. Attest: James Tanner, Register of Wills. 51-St

**Legal Notices.**

**E. F. Colladay, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration c. t. a. on the estate of Philip C. Warman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 14th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of December, 1908. **WILLIAM R. WARMAN**, care of E. F. Colladay, 1320 F st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,672. Administration. [Seal.] 61-3t

**H. Ralph Burton, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscribers, of the District of Columbia and the State of Connecticut, respectively, have obtained from the Probate Court of the District of Columbia letters testamentary on the estate of George William McLanahan, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscribers, on or before the 15th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under our hands this 15th day of December, 1908. **HELEN DAY McLANAHAN**, **GEORGE XAVIER McLANAHAN**, **CORNELIA McLANAHAN CURTIS**, Union Trust Building. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,668. Administration. [Seal.] 61-3t

**John B. Lerner, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Julia E. McCheaney, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1908. **THE WASHINGTON LOAN AND TRUST COMPANY**, by Fred'k Eichelberger, Trust Officer. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,627. Administration. [Seal.] 61-3t

**Geo. H. Lamar, Attorney**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Mary A. Jones, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 15th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 15th day of December, 1908. **VIRGINIA B. JONES**, 1705 De Sales st. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,880. Administration. [Seal.] 61-3t

**Berry & Minor, Attorneys**  
**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters of administration on the estate of Lucien E. C. Colliere, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 16th day of December, 1908. **GEO. R. COLLIERE**, 1410 G st. N. W. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,671. Administration. [Seal.] 61-3t

**Legal Notices.****SECOND INSERTION.**

**Berry & Minor, Solicitors**

**In the Supreme Court of the District of Columbia,**  
**Holding an Equity Court.**

**Anna Bessie Hopkins, Complainant, v. James Duer et al., Defendants.** Equity, No. 23,161.

**ORDER OF PUBLICATION.**

The object of this suit is to establish complainant's title by adverse possession to that part of original lot numbered eight (8), in square numbered seventy-four (74), in the city of Washington, District of Columbia, beginning for the same at the northeast corner of said lot; thence west along the south line of K street 21 feet; thence south and at right angles to said K street 49.96 feet; thence southwesterly at right angles to Pennsylvania avenue 38.30 feet to the north line of said Pennsylvania avenue; thence southeasterly along said north line of Pennsylvania avenue 15 feet 11 inches; thence northeasterly at right angles to said north line to the southwest corner of original lot numbered ten (10) in said square; thence north along the west line of said lot numbered ten (10) to the beginning. On motion of the complainant it is, this 7th day of December, 1908, ordered that the defendants, James Duer, Harriet Robbins, and Thomas R. P. Spence, if they be living, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the unknown heirs, devisees, and assignees of such of the said James Duer, Harriet Robbins, and Thomas R. P. Spence as are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for the two succeeding months, in The Washington Law Reporter and Washington Herald. [Seal] By the Court: **JOB BARNARD**, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. dec. 11, 18, 25; Jan. 1, 15, 29; Feb. 12, 26

**Wm. A. McKenney, Attorney**

**Supreme Court of the District of Columbia,**  
**Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John A. Halderman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 25th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1908. **AMERICAN SECURITY AND TRUST COMPANY**, by James F. Hood, Secretary. Attest: **JAMES TANNER**, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,622. Administration. [Seal.] 60-3t

**W. Walton Edwards, Solicitor for Complainants**

**In the Supreme Court of the District of Columbia.**  
**William Johnson et al. v. Mary Anderson.**

Equity No. 28,153.

The object of this suit is to have partition made by sale and distribution of the proceeds among the parties entitled thereto of parts of lots 28 and 29, in square 600, city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of lot 29; thence west along alley 33 feet 8 inches; thence north 21 feet; thence east 33 feet 8 inches; thence south 21 feet to beginning, with improvements. On motion of the complainants it is, this 4th day of December, 1908, ordered that the defendant, Mary Anderson, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and in The Washington Herald before said day. [Seal] **JOB BARNARD**, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 60-3t

**Legal Notices.****Berry & Minor, Solicitors****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Anna Bessie Hopkins, Complainant, v. James Duer  
et al., Defendants. Equity, No. 23,181.****ORDER OF PUBLICATION.**

The object of this suit is to establish complainant's title by adverse possession to that part of original lot numbered eight (8), in square numbered seventy-four (74), in the city of Washington, District of Columbia, beginning for the same at the northeast corner of said lot; thence west along the south line of K street 21 feet; thence south and at right angles to said K street 49.96 feet; thence southwesterly at right angles to Pennsylvania avenue 33.30 feet to the north line of said Pennsylvania avenue; thence southeasterly along said north line of Pennsylvania avenue 15 feet 11 inches; thence northeasterly at right angles to said north line to the southwest corner of original lot numbered ten (10) in said square; thence north along the west line of said lot numbered ten (10) to the beginning. On motion of the complainant it is, this 7th day of December, 1908, ordered that the defendants, James Duer, Harriet Robbins, and Thomas R. P. Spence, if they be living, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order, and that the unknown heirs, devisees, and alienees of such of the said James Duer, Harriet Robbins, and Thomas R. P. Spence as are dead cause their appearance to be entered herein on or before the first rule day occurring three months after the date of the first publication of this order; otherwise this cause will be proceeded with as in case of default. Provided a copy of this order be published for three months, once a week for three successive weeks for the first month, and twice a month for the two succeeding months, in The Washington Law Reporter and Washington Herald.

[Seal] By the Court: JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. dec. 11, 18, 25; Jan. 1, 15, 29; Feb. 12, 26

**P. R. Hilliard, Attorney****In the Supreme Court of the District of Columbia,  
Holding an Equity Court.****Annie Pearson and Joseph L. Pearson, Complainants,  
v. Paul Pearson, Defendant. Equity No. 23,018.**

Upon consideration of the report of Patrick R. Hilliard and Walter C. Balderston, trustees, appointed by the court in the above entitled cause, reporting the sale to Daniel J. Sullivan for the sum of \$1,225.00 for lot numbered 11, in Frederick B. McGuire Trustee's Subdivision of lots in square numbered 555 in the city of Washington, District of Columbia, as said subdivision is recorded in the office of the surveyor of the District of Columbia in book 19 at page 98; the said described property being also known as premises No. 218 N street northwest, in the said city and District, it is by the court this 7th day of December, 1908, ordered that said sale be and the same is hereby ratified and confirmed unless cause to the contrary be shown on or before the 28th day of December, 1908. Provided a copy of this order be published once a week for three successive weeks before said last named day in The Washington Law Reporter and Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk.

[Seal] Reporter. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by F. E. Cunningham, Asst. Clerk. 50-3t

**George H. Lamar, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Nancy F. Cox, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 16th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of December, 1908. EDWIN D. COX, 722 17th St. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,677. Administration. [Seal.] 50-3t

Justice blanks of every description for sale at this office.

**Legal Notices.****Ralston & Siddons, Attorneys****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of Elkanah N. Waters, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber, on or before the 8th day of December, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 8th day of December, 1908. MARY I. B. WATERS, 227 G st. N. W. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,648. Administration. [Seal.] 50-3t

**Wm. A. McKenney, Attorney****Supreme Court of the District of Columbia,  
Holding Probate Court.**

**This is to Give Notice** That the subscriber, of the District of Columbia, has obtained from the Probate Court of the District of Columbia letters testamentary on the estate of John A. Halderman, late of the District of Columbia, deceased. All persons having claims against the deceased are hereby warned to exhibit the same with the vouchers thereof legally authenticated, to the subscriber, on or before the 28th day of November, A. D. 1909; otherwise they may by law be excluded from all benefit of said estate. Given under my hand this 4th day of December, 1908. AMERICAN SECURITY AND TRUST COMPANY, by James F. Hood, Secretary. Attest: JAMES TANNER, Register of Wills for the District of Columbia, Clerk of the Probate Court. No. 15,622. Administration. [Seal.] 50-3t

**W. Walton Edwards, Solicitor for Complainants****In the Supreme Court of the District of Columbia.  
William Johnson et al. v. Mary Anderson.****Equity No. 23,153.**

The object of this suit is to have partition made by sale and distribution of the proceeds among the parties entitled thereto of parts of lots 28 and 29, in square 500, city of Washington, District of Columbia, described as follows: Beginning at the southeast corner of lot 29; thence west along alley 33 feet 8 inches; thence north 21 feet; thence east 33 feet 8 inches; thence south 21 feet to beginning, with improvements. On motion of the complainants it is, this 4th day of December, 1908, ordered that the defendant, Mary Anderson, cause her appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the date of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published at least once a week for three successive weeks in The Washington Law Reporter and in The Washington Herald before said day. JOB BARNARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 50-3t

[Seal] NARD, Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 50-3t

**FOURTH INSERTION.****G. C. Gertman, Solicitor****In the Supreme Court of the District of Columbia.  
Daniel W. Kelley, Complainant, v. Sarah Catharine  
Kelley et al., Defendants. Equity No. 23,124.**

The object of this suit is to obtain a decree confirming a contract of sale and for partition by sale of the north sixteen feet front on Sixth street east by depth of fifty-six feet of lot numbered thirteen (13) in square numbered eight hundred and seventy (870), in the city of Washington, District of Columbia. On motion of the complainant it is, this 2d day of December, 1908, ordered that the defendants, Frank T. Kelley and George H. Kelley, cause their appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in case of default. Provided a copy of this order be published once a week for four successive weeks in The Washington Law Reporter and The Evening Star before said day. JOB BARNARD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 49-4t

[Seal] JOB BARNARD, Associate Justice. A true copy. Test: J. R. Young, Clerk, by J. A. C. Palmer, Asst. Clerk. 49-4t

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